

ORIGINAL

NEW APPLICATION



0000171277

Haran C. Rashes
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June 14, 2016

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

T-20972A-16-0198

Re: Application and Petition for Certificate of Convenience and Necessity
to Provide Intrastate Telecommunications Services
CLEAR RATE TELECOM, L.L.C.

RECEIVED
2016 JUN 20 P 2:19
AZ CORP COMMISSION
DOCKET CONTROL

Dear Sir or Ma'am:

Enclosed for filing, please find an original and thirteen (13) copies of the Application and Petition for Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services on behalf of Clear Rate Telecom, L.L.C.

Clear Rate Telecom, L.L.C. is requesting confidential treatment of its financial statements and financial projections. Because Clear Rate Telecom, L.L.C.'s financial statements and projections are highly confidential and proprietary, redacted copies have been provided with this Application. We respectfully request a Protective Agreement prior to releasing this information to the Commission.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the enclosed self-addressed, stamped envelope.

If you have any questions in this matter, please do not hesitate to contact me at (248) 556-9522 or by e-mail at <hrashes@clearrate.com>. Thank you for your assistance in this matter.

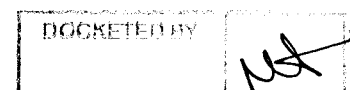
Very truly yours,

A handwritten signature in dark ink, appearing to read "Haran C. Rashes".
Haran C. Rashes

Arizona Corporation Commission
DOCKETED

JUN 17 2016

Enclosures



ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services**

Mail original plus 13 copies of completed application to:

For Docket Control Only:
(Please Stamp Here)

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Please indicate if you have current applications pending
in Arizona as an Interexchange reseller, AOS provider,
or as the provider of other telecommunication services.

Type of Service: _____

Docket No.: _____ Date: _____ Date Docketed: _____

Type of Service: _____

Docket No.: _____ Date: _____ Date Docketed: _____

A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and mark the appropriate box(s).

- ☒ Resold Long Distance Telecommunications Services (Answer Sections A, B).
- ☒ Resold Local Exchange Telecommunications Services (Answer Sections A, B, C).
- ☐ Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).
- ☒ Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E)
- ☐ Alternative Operator Services Telecommunications Services (Answer Sections A, B)
- ☐ Other _____ (Please attach complete description)

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

Clear Rate Telecom, L.L.C.
555 S. Old Woodward Ave., Suite 600
Birmingham, MI 48009
(248) 556-4500
(248) 556-4501 – Fax
www.clearrate.com

(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

Clear Rate Communications

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

Sam Namy
Chief Financial Officer
Clear Rate Telecom, L.L.C.
555 S. Old Woodward Ave., Suite 600
Birmingham, MI 48009
(248) 556-4525
(248) 556-4515 – Fax
snamy@clearrate.com

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

Haran C. Rashes
General Counsel
Clear Rate Telecom, L.L.C.
555 S. Old Woodward Ave., Suite 600
Birmingham, MI 48009
(248) 556-9522
(248) 556-9982 – Fax
hrashes@clearrate.com

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Complaint Contact Person:

Paul Sorensen
Customer Care Supervisor
Clear Rate Telecom, L.L.C.
555 S. Old Woodward Ave., Suite 600
Birmingham, MI 48009
(877) 877-4799
(248) 556-4502
(248) 556-4501 – Fax
complaints@clearrate.com

(A-7) What type of legal entity is the Applicant? Mark the appropriate box(s) and category.

- ☐ Sole proprietorship
- ☐ Partnership: _____ Limited, _____ General, _____ Arizona, _____ Foreign
- ☒ Limited Liability Company: _____ Arizona, X Foreign
- ☐ Corporation: _____ "S", _____ "C", _____ Non-profit
- ☐ Other, specify: _____

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC, or other entity in Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).
4. Deposits, Advances, and/or Prepayments Applicable to provision of Service (reference by Tariff page number).
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).

(A-10) Indicate the geographic market to be served:

☒

Statewide. (Applicant adopts statewide map of Arizona provided with this application).

☐

Other. Describe and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provide the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

Neither Clear Rate Telecom, L.L.C. nor its officers are currently involved in any formal or informal complaint proceedings before any state or federal regulatory commission, administrative agency, or law enforcement agency.

(A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provide the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.

3. Copy of the Court order, if applicable.

Neither Clear Rate Telecom, LLC. nor its officers, directors, partners, or managers are currently involved in any in any civil or criminal investigation. The sole owner of Clear Rate Telecom, L.L.C., Clear Rate Communications, Inc., has been involved several regulatory and court proceedings, all of which have been resolved. A list of the parent corporation's proceedings and applicable orders are attached hereto as Attachment F, along with copies of applicable orders.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

☒ Yes

☐ No

(A-14) Is Applicant willing to post a Performance Bond? Please check appropriate box(s).

☒ For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

☒ Yes

☐ No

If "No", continue to question (A-15).

☒ For Local Exchange Resellers, a \$25,000 bond will be recommended.

☒ Yes

☐ No

If "No", continue to question (A-15).

☒ For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

☒ Yes

☐ No

If "No", continue to question (A-15).

☒ For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

☒ Yes

☐ No

If any box in (A-14) is marked "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

Clear Rate Telecom, L.L.C. is willing to post a bond required by the Commission. However, consistent with current Commission practice, Clear Rate Telecom, L.L.C. does not believe that a bond is required.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

Clear Rate Telecom, L.L.C. is willing to post a bond required by the Commission. However, consistent with current Commission practice, Clear Rate Telecom does not believe that a bond is required. Clear Rate Telecom's deposit policy is set forth in its proposed local tariff, attached to this Application, Arizona C.C. Tariff No. 1, Sheet 23.

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

Clear Rate Telecom, L.L.C. will publish legal notices, as directed by the Commission, and will submit affidavits of publication following such publication.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in Arizona:

☒

Yes

☐

No

If "Yes", provide the name of the company or companies whose telecommunications services the Applicant resells.

Verizon

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

Clear Rate Telecom, L.L.C. is authorized to provide service in Virginia. Clear Rate Telecom, L.L.C. has never had an application to provide service denied. In Virginia, Clear Rate Telecom was authorized by the Virginia State Corporation Commission, Division of Communications (PO Box 1197, Richmond, VA 23218, <<http://www.scc.virginia.gov/>>, (804) 371-9420) in Docket PUC-2010-00067 on February 17, 2011

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in Arizona.

Note: If the Applicant currently provides telecommunication services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

In Virginia, Clear Rate Telecom, LLC is currently offering services similar to that which they propose to provide in Arizona in all of the states in which it is certified.

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

Clear Rate Communications, Inc.

(A-21) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

- ☒ Decision # 64178 Resold Long Distance
☒ Decision # 64178 Resold LEC
☐ Decision # 64178 Facilities Based Long Distance
☒ Decision # 64178 Facilities Based LEC

B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

☒ Yes ☐ No

If "No," explain why and give the date on which the Applicant began operations.

(B-2) Include "Attachment D".

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.
3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

Clear Rate Telecom, L.L.C. considers its financial information confidential. Clear Rate is willing to provide un-redacted financial statements to the Commission, under seal, following entry of a protective order in this proceeding. Clear Rate Telecom is aware that our total assets, shareholder equity, net income and net book value figures may appear in the public Staff Report, Recommended Order and final Order. However, we request that all other financial and proprietary information be kept confidential under a protective order.

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

Clear Rate Communications, Inc. is the parent company of Clear Rate Telecom, LLC. However, Clear Rate Telecom, LLC does not rely on Clear Rate Communications' financial resources.

(B-4) The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.
2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.
3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
4. If the projected value of all assets is zero, please specifically state this in your response.
5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

Please see Confidential Attachment G.

C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(C-1) Indicate if the Applicant has a resale agreement in operation,

☐

Yes

☒

No

If "Yes", please reference the resale agreement by Commission Docket Number or Commission Decision Number.

Clear Rate Telecom, L.L.C. will be requesting interconnection from CenturyTel f/k/a Qwest pursuant to 47 U.S.C. §§ 251 and 252, upon grant of this Application.

D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

☐ Yes ☒ No

If "Yes," provide the following information:

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services that the Applicant sells in Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in Arizona.

Clear Rate Telecom, L.L.C. intends to commence selling facilities-based local exchange telecommunications services in Arizona upon grant of this Application and completion of any negotiations of an Interconnection Agreement with the appropriate incumbent carriers.

E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

☒ Yes ☐ No

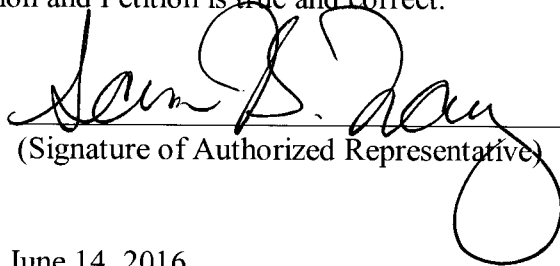
(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

☒ Yes ☐ No

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

☒ Yes ☐ No

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.



(Signature of Authorized Representative)

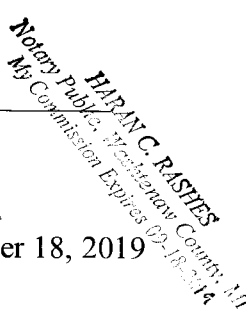
June 14, 2016
(Date)

Sam Namy
(Print Name of Authorized Representative)

Chief Financial Officer
(Title)

Subscribed and sworn to before me,
this 14th day of June, 2016


Haran C. Rashes, Notary Public
for Washtenaw County, Michigan
Acting in Oakland County, Michigan
My Commission expires on September 18, 2019



ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

ATTACHMENTS

- A. Application for Registration of Foreign Limited Liability Company
Michigan Articles of Organization and Certificate of Good Standing
- B. Proposed Tariffs:
 - B.1 – Proposed Arizona Tariff No. 1 – Local Exchange and Interexchange Telecommunications Services
 - B.2 – Proposed Arizona Tariff No. 2 – Telecommunications Access Services
- C. Proposed Legal Notice for Publication
- D. Financial Information
- E. Statewide Map
- F. Past Legal Proceedings for Parent Company
- G. Arizona Financial Projections

ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment A

1. A copy of Clear Rate Telecom, L.L.C.'s Approved Application for Registration of Foreign Limited Liability Company in Arizona is attached.
2. Clear Rate Telecom, L.L.C.'s corporate officers are:

Thane Namy – Chief Executive Officer; and,
Sam Namy – Chief Financial Officer.
3. Clear Rate Telecom, L.L.C. is a wholly owned subsidiary of Clear Rate Communications, Inc.

MAY 19 2016

FILE NO. R 2093850-6

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

**APPLICATION FOR REGISTRATION
OF FOREIGN LIMITED LIABILITY COMPANY**

Please read Instructions L025i

1. **ENTITY TYPE** - check only one to indicate the type of entity applying for registration:

☒ LIMITED LIABILITY COMPANY

☐ PROFESSIONAL LIMITED LIABILITY COMPANY

2. **NAME IN STATE OR COUNTRY OF FORMATION (FOREIGN NAME)** - enter the exact, true name of the foreign LLC:

CLEAR RATE TELECOM, L.L.C.

3. **NAME TO BE USED IN ARIZONA (ENTITY NAME)** - identify the name the foreign LLC will use in Arizona by checking 3.1 or 3.2 (check only one), and follow instructions:

3.1 ☒ **Name in state or country of formation**, with no changes or additions - go to number 4 and continue.

3.2 ☐ **Fictitious name** - check this if the foreign LLC's name in its state or country of formation is not available for use in Arizona or if that name does not contain an LLC identifier, and enter the name in number 3.3 below. **NOTE** - a resolution of the company adopting the fictitious name must be attached to and submitted with this form.

3.3 **If you checked 3.2**, enter or print the name to be used in Arizona:

4. **PROFESSIONAL LIMITED LIABILITY COMPANY SERVICES** - if professional LLC is checked in number 1 above, describe the professional services that the professional LLC will provide (examples: law firm, accounting, medical):

5. **FOREIGN DOMICILE** - list the state or country in which the foreign LLC was formed:

Michigan

6. **DATE OF FORMATION IN FOREIGN DOMICILE:** 01/13/2010

7. **PURPOSE OR GENERAL CHARACTER OF BUSINESS** - describe or state the purpose of the foreign LLC or the general character of the business it proposes to transact in Arizona:
Telecommunications Services

8. STATUTORY AGENT IN ARIZONA:					
8.1 REQUIRED - give the name (can be an individual or an entity) and physical or street address (not a P.O. Box) in Arizona of the statutory agent:			8.2 OPTIONAL - Mailing address in Arizona of statutory agent, if different from street address (can be a P.O. Box):		
Corporation Services Company					
Statutory Agent Name (required)					
Attention (optional)			Attention (optional)		
2338 W. Royal Palm, Suite J.					
Address 1			Address 1		
Address 2 (optional)		AZ	85021	Address 2 (optional)	
City	Phoenix	State	Zip	City	State Zip
8.3 REQUIRED - the <u>Statutory Agent Acceptance</u> form M002 must be submitted along with this Application For Registration.					

- 9. PRINCIPAL OFFICE ADDRESS - FOREIGN DOMICILE STREET ADDRESS** - *see Instructions L025i* - give the **physical or street address** (not a P. O. Box) of the foreign LLC required to be maintained in its state of organization, or, if not so required, of the foreign LLC's statutory agent in its state or country of organization:

Attention (optional)		
555 S. Old Woodward, Suite 600		
Address 1		
Address 2 (optional)		
Birmingham	MI	48009
City	State or Province	Zip
Country	UNITED STATES	

10. OPTIONAL - ARIZONA KNOWN PLACE OF BUSINESS ADDRESS:

- 10.1** Is the Arizona known place of business street address the same as the **street address** of the statutory agent? ☒ Yes - go to the next page and continue.
☐ No - complete number 10.2 and continue.

- 10.2** If you answered "no" to number 10.1, give the physical or street address (not a P.O. Box) of the known place of business of the LLC in Arizona:

Attention (optional)		
Address 1		
Address 2 (optional)		
City	State or Province	Zip
Country		

COMPLETE NUMBER 11 OR NUMBER 12 – NOT BOTH.

11. **MANAGER-MANAGED LLC** – *see Instructions L025i* – check this box ☒ if management of the LLC is vested in a manager or managers, and complete and attach the Manager Structure Attachment form L040. *The filing will be rejected if it is submitted without the attachment.*
12. **MEMBER-MANAGED LLC** – *see Instructions L025i* – check this box ☐ if management of the LLC is reserved to the members, and complete and attach the Member Structure Attachment form L041. *The filing will be rejected if it is submitted without the attachment.*
13. **SIGNATURE:** By checking the box marked "I accept" below, I acknowledge *under penalty of perjury* that this document together with any attachments is submitted in compliance with Arizona law.

☒ I ACCEPT



Haran C. Rashes

05/17/2016

Signature

Printed Name

Date

REQUIRED – check only one and fill in the corresponding blank if signing for an entity:

<input type="checkbox"/> I am the individual Manager of this manager-managed LLC or I am signing for an entity manager named:	<input type="checkbox"/> I am a Member of this member-managed LLC or I am signing for an entity member named:	<input checked="" type="checkbox"/> I am a duly authorized agent for this LLC.
---	---	---

Filing Fee: \$150.00 (regular processing)
Expedited processing – add \$35.00 to filing fee.
All fees are nonrefundable – see Instructions.

Mail: Arizona Corporation Commission – Corporate Filings Section
1300 W. Washington St., Phoenix, Arizona 85007
Fax: 602-542-4100

Please be advised that A.C.C. forms reflect only the **minimum** provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.
All documents filed with the Arizona Corporation Commission are **public record** and are open for public inspection.
If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

STATUTORY AGENT ACCEPTANCE

Please read Instructions M002i

1. **ENTITY NAME** – give the **exact** name in Arizona of the corporation or LLC that has appointed the Statutory Agent (this must match exactly the name as listed on the document appointing the statutory agent, e.g., Articles of Organization or Article of Incorporation):

CLEAR RATE TELECOM, L.L.C.

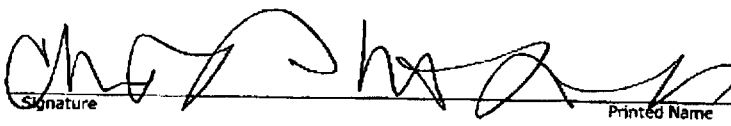
2. **STATUTORY AGENT NAME** – give the exact name of the Statutory Agent appointed by the entity listed in number 1 above (this will be *either* an individual or an entity). **NOTE** - the name must match **exactly** the statutory agent name as listed in the document that appoints the statutory agent (e.g. Articles of Incorporation or Articles of Organization), including any middle initial or suffix:

Corporation Service Company

3. STATUTORY AGENT SIGNATURE:

By the signature appearing below, the individual or entity named in number 2 above accepts the appointment as statutory agent for the entity named in number 1 above, and acknowledges that the appointment is effective until the appointing entity replaces the statutory agent or the statutory agent resigns, whichever occurs first.

The person signing below declares and certifies *under penalty of perjury* that the information contained within this document together with any attachments is true and correct, and is submitted in compliance with Arizona law.

 Chelsey Martine 5/11/14
Signature Printed Name Date

REQUIRED – check only one:

☐ **Individual as statutory agent:** I am signing on behalf of myself as the individual (natural person) named as statutory agent.

☒ **Entity as statutory agent:** I am signing on behalf of the entity named as statutory agent, and I am authorized to act for that entity.

Filing Fee: none (regular processing)
Expedited processing – not applicable.
All fees are nonrefundable – see Instructions.

Mail: Arizona Corporation Commission - Corporate Filings Section
1300 W. Washington St., Phoenix, Arizona 85007
Fax: 602-542-4100

Please be advised that A.C.C. forms reflect only the **minimum** provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.
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If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

MANAGER STRUCTURE ATTACHMENT

- 1. ENTITY NAME** – give the exact name of the LLC (foreign LLCs – give name in domicile state or country):
Clear Rate Telecom, L.L.C.
- 2. A.C.C. FILE NUMBER** (if known):
Find the A.C.C. file number on the upper corner of filed documents OR on our website at: <http://www.azcc.gov/Divisions/Corporations>
- 3. Check one box only to indicate what document the Attachment goes with:**
☒ Articles of Organization ☐ Articles of Amendment
☐ Application for Registration ☐ Articles of Amendment to Application for Registration
- 4. MANAGERS / MEMBERS** – give the name and address of each and every **manager** and list all **members who own 20% or more** of the profits or capital of the LLC. Members who own less than 20% may also be listed, but it is not required. Check the appropriate box or boxes below each person listed – *do not check both member boxes*. If more space is needed, use another Manager Structure Attachment form.

Clear Rate Communications, Inc.			Thane Namy		
Name 555 S. Old Woodward Ave., Suite 600			Name 555 S. Old Woodward		
Address 1			Address 1		
Address 2 (optional)			Address 2 (optional)		
Birmingham	MI	48009	Birmingham	MI	48009
City	State or Province	Zip	City	State or Province	Zip
UNITED STATES			UNITED STATES		
Country			Country		
<input type="checkbox"/> Manager <input checked="" type="checkbox"/> 20% or more member <input type="checkbox"/> Less than 20% member			<input type="checkbox"/> Manager <input type="checkbox"/> 20% or more member <input type="checkbox"/> Less than 20% member		
Sam Namy					
Name			Name		
555 S. Old Woodward Ave., Suite 600					
Address 1			Address 1		
Address 2 (optional)			Address 2 (optional)		
Birmingham	MI	48009			
City	State or Province	Zip	City	State or Province	Zip
UNITED STATES					
Country			Country		
<input checked="" type="checkbox"/> Manager <input type="checkbox"/> 20% or more member <input type="checkbox"/> Less than 20% member			<input type="checkbox"/> Manager <input type="checkbox"/> 20% or more member <input type="checkbox"/> Less than 20% member		
Name			Name		
Address 1			Address 1		
Address 2 (optional)			Address 2 (optional)		
City	State or Province	Zip	City	State or Province	Zip
Country			Country		
<input type="checkbox"/> Manager <input type="checkbox"/> 20% or more member <input type="checkbox"/> Less than 20% member			<input type="checkbox"/> Manager <input type="checkbox"/> 20% or more member <input type="checkbox"/> Less than 20% member		

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF REGISTRATION

To all to whom these presents shall come, greeting:

I, Jodi A. Jerich, Executive Director of the Arizona Corporation Commission, do hereby certify that

*****CLEAR RATE TELECOM, L.L.C.*****

a foreign limited liability company organized under the laws of the jurisdiction of Michigan did obtain a Certificate of Registration in Arizona on the 19th day of May 2016.

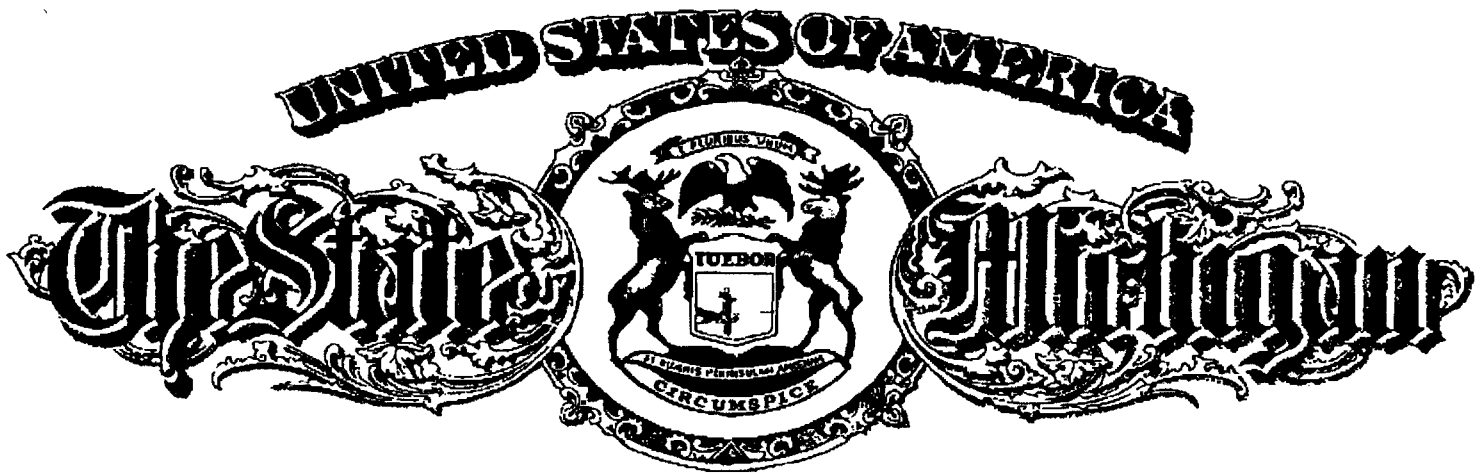
This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 25th Day of May, 2016, A. D.



Jodi A. Jerich
Jodi A. Jerich, Executive Director

By: 



Department of Licensing and Regulatory Affairs

Lansing, Michigan

This is to Certify That

CLEAR RATE TELECOM, L.L.C.

was validly organized on January 13, 2010 as a Limited Liability Company. Said Limited Liability Company is validly in existence under the laws of this state and has satisfied its annual filing obligations.

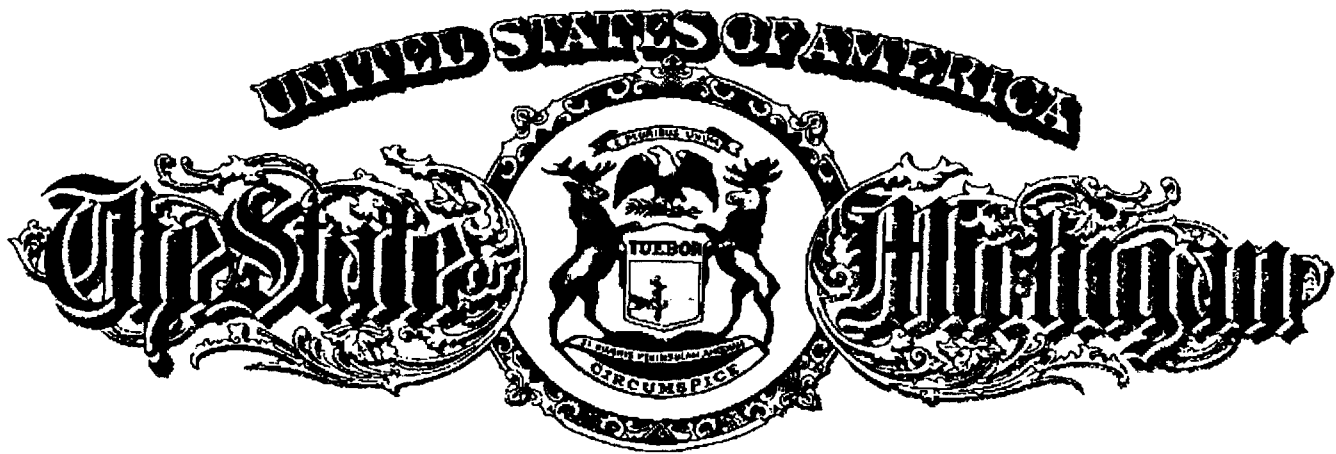
This certificate is issued pursuant to the provisions of 1993 PA 23, as amended, to attest to the fact that the company is in good standing in Michigan as of this date.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

*In testimony whereof, I have hereunto set my hand,
in the City of Lansing, this 5th day of May, 2016*

Julia Dale

**Julia Dale, Director
Corporations, Securities & Commercial Licensing Bureau**



Department of Licensing and Regulatory Affairs
Lansing, Michigan

This is to Certify that the annexed copy has been compared by me with the record on file in this Department and that the same is a true copy thereof.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I have hereunto set my hand, in the City of Lansing, this 5th day of May, 2016

Julia Dale

Julia Dale, Director
Corporations, Securities & Commercial Licensing Bureau

Michigan Department of Energy, Labor & Economic Growth

Filing Endorsement

This is to Certify that the ARTICLES OF ORGANIZATION (DOMESTIC L.L.C.)

for

CLEAR RATE TELECOM, L.L.C.

ID NUMBER: D3709E

received by facsimile transmission on January 13, 2010 is hereby endorsed

Filed on January 13, 2010 by the Administrator.

*The document is effective on the date filed, unless a
subsequent effective date within 90 days after
received date is stated in the document.*



*In testimony whereof, I have hereunto set my
hand and affixed the Seal of the Department,
in the City of Lansing, this 14TH day
of January, 2010.*

A handwritten signature in dark ink, appearing to read "A. Hughes", is written over a faint horizontal line.

Director

BCS/CD-700 (Rev. 01/09)

MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH BUREAU OF COMMERCIAL SERVICES

Date Received	(FOR BUREAU USE ONLY)
	This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.
Name Norman C. Witte	
Address 119 E. Kalamazoo Street	
City Lansing	State MI
Zip Code 48933	EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

ARTICLES OF ORGANIZATION

For use by Domestic Limited Liability Companies

(Please read information and instructions on last page)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned execute the following Articles:

B

ARTICLE I

The name of the limited liability company is: Clear Rate Telecom, L.L.C.

ARTICLE II

The purpose or purposes for which the limited liability company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan.

ARTICLE III

The duration of the limited liability company if other than perpetual is: _____

ARTICLE IV

1. The street address of the location of the registered office is:

24700 Northwestern Hwy, Suite 340 Southfield, Michigan 48075
(Street Address) (City) (ZIP Code)

2. The mailing address of the registered office if different than above:

_____, Michigan _____
(Street Address or P.O. Box) (City) (ZIP Code)

3. The name of the resident agent at the registered office is: Sam Namy

ARTICLE V (Insert any desired additional provision authorized by the Act; attach additional pages if needed.)

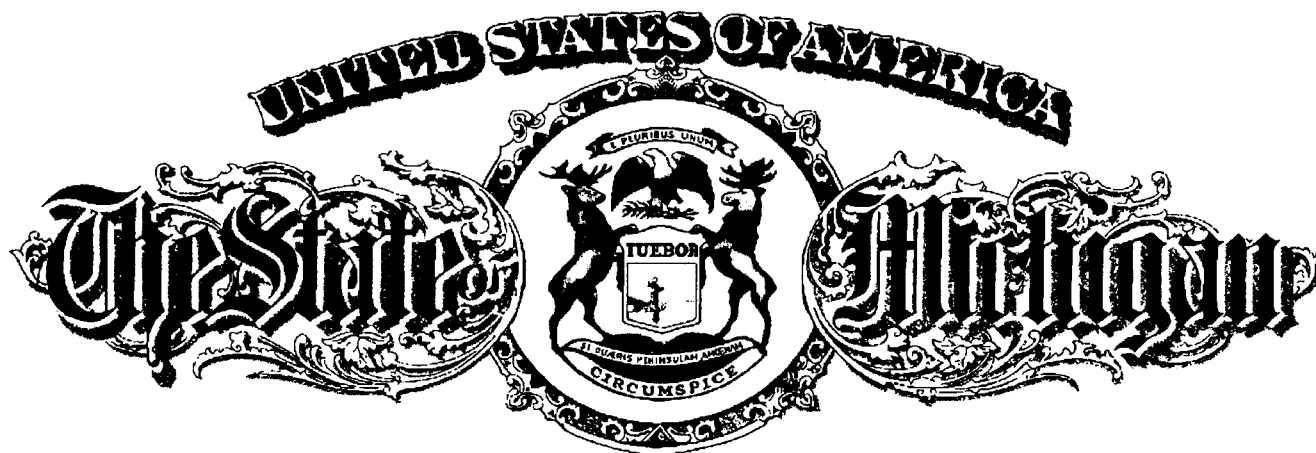
Signed this 18th day of January, 2010

By _____

(Signature(s) of Organizer(s))

Norman C. Witte

(Type or Print Name(s) of Organizer(s))



Department of Licensing and Regulatory Affairs

Lansing, Michigan

This is to Certify that the annexed copy has been compared by me with the record on file in this Department and that the same is a true copy thereof.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I have hereunto set my hand, in the City of Lansing, this 1st day of June, 2016

Julia Dale

Julia Dale, Director
Corporations, Securities & Commercial Licensing Bureau

Michigan Department of Energy, Labor & Economic Growth

Filing Endorsement

This is to Certify that the ARTICLES OF ORGANIZATION (DOMESTIC L.L.C.)

for

CLEAR RATE TELECOM, L.L.C.

ID NUMBER: D3709E

received by facsimile transmission on January 13, 2010 is hereby endorsed

Filed on January 13, 2010 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.



In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 14TH day of January, 2010.

Director

Bureau of Commercial Services

BCS/CD-700 (Rev. 01/09)

MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH BUREAU OF COMMERCIAL SERVICES											
Date Received	(FOR BUREAU USE ONLY)										
This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.											
<table border="1"> <tr> <td colspan="3">Name Norman C. Witte</td> </tr> <tr> <td colspan="3">Address 119 E. Kalamazoo Street</td> </tr> <tr> <td>City Lansing</td> <td>State MI</td> <td>Zip Code 48933</td> </tr> </table>			Name Norman C. Witte			Address 119 E. Kalamazoo Street			City Lansing	State MI	Zip Code 48933
Name Norman C. Witte											
Address 119 E. Kalamazoo Street											
City Lansing	State MI	Zip Code 48933									
EFFECTIVE DATE:											

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

ARTICLES OF ORGANIZATION**For use by Domestic Limited Liability Companies**

(Please read information and instructions on last page)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned execute the following Articles:

B**ARTICLE I**The name of the limited liability company is: Clear Rate Telecom, L.L.C.**ARTICLE II**

The purpose or purposes for which the limited liability company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan.

ARTICLE III

The duration of the limited liability company if other than perpetual is: _____

ARTICLE IV

1. The street address of the location of the registered office is:

24700 Northwestern Hwy, Suite 340 Southfield, Michigan 48075
(Street Address) (City) (ZIP Code)

2. The mailing address of the registered office if different than above:

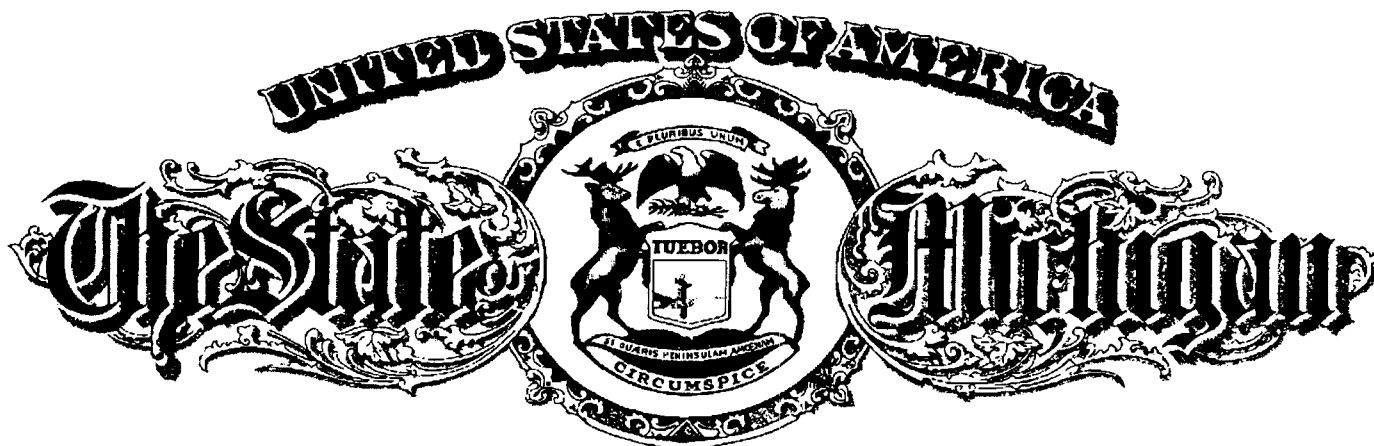
_____, Michigan _____
(Street Address or P.O. Box) (City) (ZIP Code)
3. The name of the resident agent at the registered office is: Sam Namy**ARTICLE V** (Insert any desired additional provision authorized by the Act; attach additional pages if needed.)Signed this 18th day of January, 2010

By _____

(Signature(s) of Organizer(s))

Norman C. Witte

(Type or Print Name(s) of Organizer(s))



Department of Licensing and Regulatory Affairs

Lansing, Michigan

This is to Certify That

CLEAR RATE TELECOM, L.L.C.

was validly organized on January 13, 2010 as a Limited Liability Company. Said Limited Liability Company is validly in existence under the laws of this state and has satisfied its annual filing obligations.

This certificate is issued pursuant to the provisions of 1993 PA 23, as amended, to attest to the fact that the company is in good standing in Michigan as of this date.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

*In testimony whereof, I have hereunto set my hand,
in the City of Lansing, this 1st day of June, 2016*

Julia Dale, Director
Corporations, Securities & Commercial Licensing Bureau

ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment B.1

Proposed Arizona Tariff No. 1
Local Exchange and Interexchange Telecommunications Services

**ARIZONA
LOCAL EXCHANGE
AND
INTEREXCHANGE TELECOMMUNICATIONS SERVICES TARIFF
OF
CLEAR RATE TELECOM, L.L.C.**

This Tariff List contains the descriptions, regulations, and rates applicable to the furnishing of service for local exchange and interexchange telecommunication services within the state of Arizona provided by Clear Rate Telecom, L.L.C. This Tariff is on file with the Arizona Corporation Commission and copies may be inspected at Clear Rate Communications principal office located at 555 S. Old Woodward, Birmingham, Michigan 48009, during normal business hours.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

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Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

CHECK SHEET

The Title Page and pages listed below are effective as of the date originally shown. Original and revised pages as named below comprise all changes from the original Tariff in effect on the date indicated on each page. Unless otherwise indicated, pages are effective _____.

<u>Page</u>	<u>Revision</u>	<u>Effective</u>	<u>Page</u>	<u>Revision</u>	<u>Effective</u>	<u>Page</u>	<u>Revision</u>	<u>Effective</u>
1-Title	Original		31	Original		61	Original	
2	Original		32	Original		62	Original	
3	Original		33	Original		63	Original	
4	Original		34	Original		64	Original	
5	Original		35	Original		65	Original	
6	Original		36	Original		66	Original	
7	Original		37	Original				
8	Original		38	Original				
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10	Original		40	Original				
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28	Original		58	Original				
29	Original		59	Original				
30	Original		60	Original				

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

EXPLANATION OF SYMBOLS

- | | |
|---|---|
| C | To signify changed regulation |
| D | To signify discontinued rate or regulation |
| I | To signify increase |
| M | To signify matter relocated without change |
| N | To signify new rate or regulation |
| R | To signify reduction |
| S | To signify reissued matter |
| T | To signify a change in text but no change in rate or regulation |

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

TARIFF FORMAT

- A. Sheet Numbering – Sheet numbers appear in the right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the Tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 13 and 14 would be 13.1.
- B. Sheet Revision Numbers – Sheet revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. Consult the check sheet for the sheet currently in effect.
- C. Paragraph Numbering Sequence – There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2
2.1
2.1.1
2.1.1.A
2.1.1A.1
2.1.1.A.1.(a)
2.1.1.A.1.(a).I
2.1.1.A.1.(a).I.(i)
2.1.1.A.1.(a).I.(i).(1)

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes; General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

SECTION 1 – APPLICATION OF TARIFF

1. APPLICATION OF TARIFF

1.1 Applicable Services

This Tariff sets forth the regulations and rates applicable to services provided by Clear Rate Telecom, L.L.C. as follows:

1.1.1. The furnishing of intrastate communications services, including local exchange and long distance service, by virtue of one-way and/or two-way information transmission between points within the State of Arizona.

1.1.2. Service Territory

Clear Rate Telecom, L.L.C. will provide service in the areas in which Qwest d/b/a CenturyLink is the incumbent local exchange carrier throughout the State of Arizona.

1.2 Availability

Service is available where facilities permit.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

SECTION 2 – DEFINITIONS

2. DEFINITIONS APPLICABLE TO TARIFF

Access Line – An arrangement which connects the Customer's location to a carrier's switching center or point of presence.

Account Codes – Optional, Customer-defined digits that allow the Customer to identify the individual user, department or client associated with a call. Account Codes appear on the Customer bill.

Advance Payment – Part or all of a payment required before the start of service.

Authorized User – A person, firm, corporation, or any other entity authorized by the Customer to communicate utilizing the Company's service.

Available Usage Balance – The amount of usage remaining on a Debit Account at any particular point in time. Each Debit Account begins with an initial usage amount which is depleted as services provided by the Company are utilized by the Customer.

Business – A class of service provided to individuals engaged in business, firms, partnerships, corporations, agencies, shops, works, tenants of office buildings, and individuals practicing a profession or operating a business who have no offices other than their residences and where the use of the service is primarily or substantially of a business, professional or occupational nature.

Business Customer – A Business Customer is a Customer who subscribes to the Company's Service(s) and whose primary use of the Service is of a business, professional, institutional, or otherwise occupational nature.

Business Service – A switched network service that provides for dial station communications that is described as a business or commercial rate.

Commission – Arizona Corporation Commission.

Company or Carrier – Used throughout this Tariff to refer to Clear Rate Telecom, L.L.C., unless otherwise clearly indicated by the context.

Customer – The person, firm, corporation or other entity which orders, cancels, amends or uses service and is responsible for payment of charges and compliance with the Company's Tariff.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

2. DEFINITIONS APPLICABLE TO TARIFF, CONT'D.

Debit Account - An account which consists of a pre-paid usage balance depleted on a real time basis during each Debit Service Call.

Deposit - Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges.

Dial Pulse (or "DP") - The pulse type employed by rotary dial station sets.

DID Trunk - A form of local switched access that provides the ability for an outside party to call an internal extension directly without the intervention of the Company operator.

Dual Tone Multi-Frequency (or "DTMF") - The pulse type employed by tone dial station sets.

End Office - With respect to each NPA-NXX code prefix assigned to the Company, the location of the Company's "end office" for purposes of this Tariff shall be the point of interconnection associated with that NPA-NXX code in the Local Exchange Routing Guide ("LERG"), issued by Telcordia.

End User - Any person, firm, corporation, partnership or other entity which uses the services of the Company under the provisions and regulations of this Tariff. The End User is responsible for payment unless the charges for the services utilized are accepted and paid for by another Customer.

Hearing Impaired - Those persons with communication impairments, including those hearing impaired, deaf, deaf/blind, and speech impaired persons who have an impairment that prevents them from communicating over the telephone without the aid of a telecommunications device for the deaf.

Holidays - Holidays observed by the Company as specified in this Tariff.

Hunting - Routes a call to an idle station line in a prearranged group when the called station line is busy.

In-Only - A service attribute that restricts outward dial access and routes incoming calls to a designated answer point.

IXC or Interexchange Carrier - A long distance telecommunications services provider.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

2. DEFINITIONS APPLICABLE TO TARIFF, CONT'D.

LATA – A Local Access and Transport Area established pursuant to the Modification of Final Judgement entered by the United States District Court for the District of Columbia in *United States v American Telephone and Telegraph Co.*, 569 F.Supp. 990 (D.D.C. 1983); or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4.

LEC – Local Exchange Company

Minimum Point of Presence ("MPOP") – The main telephone closet in the Customer's building.

Monthly Recurring Charges – The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Multi-Frequency or ("MF") – An inter-machine pulse type used for signaling between telephone switches or between telephone switches and PBX/key systems.

Non-Recurring Charge ("NRC") – The initial charge, usually assessed on a one-time basis, to initiate and establish service.

Other Telephone Company – An Exchange Telephone Company, other than the Company.

PBX – Private Branch Exchange

Personal Account Code - A pre-defined series of numbers to be dialed by the Customer or Authorized User upon access to the Carrier's network which identifies the Debit Account from which charges for service shall be debited and which validates the caller's authorization to use the services provided.

Premises – A building or buildings on contiguous property.

Recurring Charges – The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

Residential Customer – A Residential Customer is a person to whom telecommunications services are furnished by the Company predominantly for personal or domestic purposes at the person's dwelling.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

2. DEFINITIONS APPLICABLE TO TARIFF, CONT'D.

Service Commencement Date – The first day following the date on which the Company notifies the Customer that the requested service is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order and this Tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

Service Order – The written request for services executed by the Customer and the Company in the format devised by the Company. The signing of an Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this Tariff, but the duration of the service is calculated from the Service Commencement Date.

Switched Access - A method for reaching the Company through the local switched network whereby the End User uses standard business or residential local lines.

TBD - To Be Determined.

Telecommunications Company or Provider - Used throughout this Tariff to mean Clear Rate Telecom, L.L.C. unless clearly indicated otherwise by the text.

Two Way – A service attribute that includes outward dial capabilities for outbound calls and can also be used to carry inbound calls to a central point for further processing.

Usage Based Charges – Charges for minutes or messages traversing over local exchange facilities.

User or End User – A Customer, Joint User, or any other person authorized by a Customer to use service provider under this Tariff.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

SECTION 3 – GENERAL RULES AND REGULATIONS

3. GENERAL RULES AND REGULATIONS

3.1 Use of Facilities and Services

3.1.1. Obligation of the Company

In furnishing facilities and service, the Company does not undertake to transmit messages, but furnishes the use of its facilities to its customers for communications.

The Company's obligation to furnish facilities and service is dependent upon its ability (a) to secure and retain, without unreasonable expense, suitable facilities and rights for the construction and maintenance of the necessary circuits and equipment; (b) to secure and retain, without unreasonable expense, suitable space for its plant and facilities in the building where service is or will be provided to the customer; or (c) to secure reimbursement of all costs where the owner or operator of a building demands relocation or rearrangement of plant and facilities used in providing service therein.

The Company shall not be required to furnish, or continue to furnish, facilities or service where the circumstances are such that the proposed use of the facilities or service would tend to adversely affect the Company's plant, property or service.

The Company reserves the right to refuse an application for service made by a present or former customer who is indebted to the Company for service previously rendered pursuant to this Tariff until the indebtedness is satisfied.

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

3. GENERAL RULES AND REGULATIONS, CONT'D**3.1 Use of Facilities and Services, Cont'd.****3.1.2. Limitations on Liability**

3.1.2.A. Except where the Commission, for good cause shown, determines otherwise, the Customer and any authorized or joint users, jointly and severally, shall indemnify, defend and hold harmless the Company and the Company shall not be liable for any claims, loss, damage or expenses (including attorneys' fees and court costs) involving:

1. Any act or omission of: (a) the Customer; (b) any other entity furnishing service, equipment or facilities for use in conjunction with the Service or facilities provided by the Company; or (c) common carriers, warehousemen or middle men;
2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including, but not limited to, acts of God, fires, floods, earthquakes, hurricanes, storms, or other natural catastrophes; pole hits; explosions; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties, including rights-of-way and materials; and any law, order, regulation, direct, request, or other action of any governing authority or agency thereof;
3. Any unlawful or unauthorized use of the Company's facilities and Service or the use of the Company's facilities and/or Service in violation of this Tariff;
4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications or information by means of Company-provided facilities or Service, or by means of the combination of Company-provided facilities or Service with Customer-provided facilities or services;

Issued: June 15, 2016

Effective: _____

Issued by: Haran C. Rashes, General Counsel and Director of Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

3. GENERAL RULES AND REGULATIONS, CONT'D.**3.1 Use of Facilities and Services, Cont'd.****3.1.2 Limitations on Liability Cont'd.**

5. Any infringement, breach or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by the Company, including but not limited to, the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 service, and which arise out of the negligence or other wrongful act of the Company, the Customer, its users, agencies or municipalities, other employees or agents of any one of them;
6. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in this Section 3.1;
7. Defacement of or damage to Customer premises resulting from the furnishing of Service or equipment on such premises or the installation or removal thereof;
8. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected, to the Company's facilities;
9. Any intentional, wrongful act of a Company employee when such act is not within the scope of the employee's responsibilities for the Company and/or is not authorized by the Company;

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3. GENERAL RULES AND REGULATIONS, CONT'D.

3.1 Use of Facilities and Services, Cont'd.

3.1.2 Limitations on Liability, Cont'd.

10. Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this Tariff;
11. Any act, omission or network condition resulting in the non-availability of 9-1-1, E-9-1-1, or similar emergency services for any reason including, without limitation and by way of example only, due to any failure of Service functionality or interruption of electric service to Customer's premises;
12. Any non-completion of calls due to network busy conditions or network failures;
13. Any calls not actually attempted to be completed during any period that Service is unavailable;
14. Blockages by other providers of services on the public switched network; and
15. Breach in the privacy or security of communications transmitted over the Company's facilities.

3.1.2.B. The Company shall be indemnified, defended and held harmless by the Customer or End User from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, insinuated, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use, or removal of any Company or Customer-provided equipment or facilities or Service provided by the Company.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.1 Use of Facilities and Services, Cont'd.****3.1.2 Limitations on Liability, Cont'd.**

- 3.1.2.C. The Company does not guarantee nor make any warranty with respect to Service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations.
- 3.1.2.D. The Company assumes no responsibility for the availability or performance of any systems or related facilities under the control of other entities, whether or not affiliated with the Company, or for other facilities provided by other entities used for Service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or non-preemptibility as may be provided by the other entities.
- 3.1.2.E. Except as otherwise state in this Tariff, any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.
- 3.1.2.F. The Company makes no warranties or representations express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those expressly set forth herein.
- 3.1.2.G. The Company will not be liable for any charge incurred when any long distance (toll call) carrier or alternative operator service provider accepts third-number billed or collect calls.
- 3.1.2.H. When the facilities of other companies are used in establishing a connection, the Company is not liable for any act, error, omission, or interruption caused by the other Company or their agents or employees. This includes the provision of a signaling system database by another Company.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.1 Use of Facilities and Services, Cont'd.****3.1.2 Limitations on Liability, Cont'd.**

3.1.2.1. THE INCLUDED EXCULPATORY LANGUAGE DOES NOT CONSTITUTE A DETERMINATION BY THE COMMISSION THAT A LIMITATION OF LIABILITY IMPOSED BY THE COMPANY SHOULD BE UPHELD IN A COURT OF LAW. ACCEPTANCE FOR FILING BY THE COMMISSION RECOGNIZES THAT IT IS A COURT'S RESPONSIBILITY TO ADJUDICATE NEGLIGENCE AND CONSEQUENTIAL DAMAGE CLAIMS. IT IS ALSO THE COURT'S RESPONSIBILITY TO DETERMINE THE VALIDITY OF THE EXCULPATORY CLAUSE.

3.2 Liability of the Company**3.2.1. General**

3.2.1.A. Except as otherwise states in this Tariff, liability of the Company for damages arising out of either (1) the furnishing of its Service, including, but not limited to, mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these Services, or (2) the failure to furnish its Service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in Service.

3.2.1.B. Except for the extension of allowances to the Customer for interruptions in Service, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, error, degradation or failure to provide any Service, including the partial or complete inability to access emergency 911 services during any such failure, or any failure in or breakdown of facilities associated with the Service.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.2 Liability of the Company, Cont'd.****3.2.1 General, Cont'd.**

3.2.1.C. The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and Service has been discontinued, to a refund of the amount erroneously billed.

3.2.1.D. With respect to Emergency Number 911 Service:

1. The Service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made instituted or asserted by the Customer or by any other party or person for any personal injury or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of service, of (2) installation, operation, failure to operate, maintenance, removal, presence, condition, local or use of any equipment and facilities furnishing this service.
2. The Company is not responsible for any infringement, nor invasion of the right of privacy of any person or persons, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by the Company, including, but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 service, and which arise out of the negligence or other wrongful act of the Company, the Customer, its users, agencies or municipalities, or the employee or agents of any one of them.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.2 Liability of the Company, Cont'd.****3.2.2. Use of Service**

Any service provided under this Tariff may be resold to or shared (jointly used) with other persons at the customer's option. The customer remains solely responsible for all use of service ordered by it or billed to its telephone number(s) pursuant to this Tariff, for determining who is authorized to use its service, and for promptly notifying the Company of any unauthorized use. The customer may advise its customers that a portion of its service is provided by the Company, but the customer shall not represent that the Company jointly participates with the customer in the provision of the service.

3.2.3. Use and Ownership of Equipment

The Company's equipment, apparatus, channels and lines shall be carefully used. Equipment furnished by the Company shall remain its property and shall be returned to the Company whenever requested, within a reasonable period following the request, in good condition, reasonable wear and tear accepted. The customer is required to reimburse the Company for any loss of, or damage to, the facilities or equipment on the customer's premises, including loss or damage caused by agents, employees or independent contractors of the customer through any negligence.

3.2.4. Directory Errors

In the absence of gross negligence or willful misconduct and except for the allowances stated below, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listings obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company.

An allowance for errors or mistakes in or omissions of published directory listings or for errors or mistakes in or omissions of listings obtainable from the directory assistance operator shall be given as follows:

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.2 Liability of the Company, Cont'd.****3.2.4 Directory Errors, Cont'd.**

- 3.2.4.A. Free Listings: For free or no-charge published directory listings, credit shall be given at the rate of two times the monthly Tariff rate for an additional or charge listing for each individual, auxiliary or party line, PBX trunk or Centrex attendant loop affected, for the life of the directory or the charge period during which the error, mistake or omission occurs.
- 3.2.4.B. Charge Listings: For additional or charge published directory listings, credit shall be given at the monthly Tariff rate for each such listing for the life of the directory or the charge period during which the error, mistake or omission occurs.
- 3.2.4.C. Operator records: For free or charge listings obtainable from records used by the directory assistance operator, upon notification to the Company of the error, mistake or omission in such records by the subscriber, the Company shall be allowed a period of three business days to make a correction. If the correction is not made in that time, credit shall be given at the rate of 2/30ths of the basic monthly rate for the line or lines in question for each day thereafter that the records remain uncorrected. (Where Centrex attendant loops are involved, credit shall be given at the rate of 2/30ths of the basic monthly rate for PBX trunks.)
- 3.2.4.D. Credit limitation: The total amount of the credit provided for the preceding paragraphs A, B, and C shall not exceed, on a monthly basis, the total of the charges for each charge listing plus the basic monthly rate, as specified in paragraph 3, for the line or lines in question.
- 3.2.4.E. Definitions: As used in Paragraphs A, B, C, and D above, the terms "error," "mistake" or "omission" shall refer to a discrepancy in the directory listing or directory assistance records which the Company has failed to correct and where the error affects the ability to locate a particular subscriber's correct telephone number. The terms shall refer to addresses only to the extent that an error, mistake or omission of an address places the subscriber on an incorrect street or in an incorrect community.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.2 Liability of the Company, Cont'd.****3.2.4 Directory Errors, Cont'd.**

3.2.4.F. Notice: Such allowances or credits as specified in Paragraphs A, B, and C above, shall be given upon notice to the Company by the subscriber that such error, mistake or omission has occurred; provided, however, that when it is administratively feasible for the Company to have knowledge of such error, mistake or omission, the Company shall give credit without the requirement of notification by the subscribers.

3.3 Minimum Period of Service

The minimum period of service is one month except as otherwise provided in this Tariff. The customer must pay the regular Tariff rate for the service they subscribe to for the minimum period of service. If a customer disconnects service before the end of the minimum service period, that customer is responsible for paying the regular rates for the remainder of the minimum service period. When the service is moved within the same building, to another building on the same premises, or to a different premises entirely, the period of service at each location is accumulated to calculate if the customer has met the minimum period of service obligation.

If service is terminated before the end of the minimum period of service as a result of condemnation of property, damage to property requiring the premises to be abandoned, or by the death of the customer, the customer is not obligated to pay for service for the remainder of the minimum period.

If service is switched over to a new customer at the same premises after the first month's service, the minimum period of service requirements are assigned to the new customer if the new customer agrees in writing to accept them. For facilities not taken over by the new customer, the original customer is responsible for the remaining payment for the minimum service period in accordance with the terms under which the service was originally furnished.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.4 Flexible Pricing****3.4.1. General**

Flexible Pricing sets minimum and maximum rates that can be charged for telephone service. The Company may change a specific rate within the range of the established minimum and maximum rates on one day's notice to customers and the Public Service Commission.

3.4.2. Conditions

- 3.4.2.A. The Company reserves the right to change prices at any time subject to regulatory requirements by filing a revised Rate Attachment with the Commission.
- 3.4.2.B. Individual written notice to Customers of rate changes shall be made in accordance with Commission regulations. Where there are no regulations, notification will be made in a manner appropriate to the circumstances involved.
- 3.4.2.C. A rate shall not be changed unless it has been in effect for at least thirty (30) days.
- 3.4.2.D. A customer can request that the Company disconnect service that is provided under the Flexible Pricing due to a price increase. The customer will be credited for the difference between the new price and the old price retroactive to the effective date of the price increase if the customer notifies the Company of its desire to disconnect service within 20 days of receiving notification of the price increase.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.5 Payment for Service Rendered****3.5.1. Responsibility for All Charges**

Any applicant for facilities or service may be required to sign an application form requesting the Company to furnish the facilities or service in accordance with the rates, charges, rules and regulations from time to time in force and effect. The customer is responsible for all local and toll calls originating from the customer's premises and for all calls charged to the customer's line where any person answering the customer's line agrees to accept such charge.

3.5.2. Advance Payments

3.5.2.A. At the time an application for service is made, an applicant may be required to pay an amount equal to at least one month's service and/or installation charges which may be applicable, in addition to such special construction and installation charges as are to be borne by the applicant. The amount of the advance payment is credited to the customer's account on the first bill rendered.

3.5.2.B. Federal, State or Municipal governmental agencies may not be required to make advance payments.

3.5.3. Credit Policy**3.5.3.A. Deposit and Guarantee Requirements**

The Company may require a deposit or guarantee of payment from any customer or applicant who has not established good credit with that Company. Deposit or guarantee of payment requirements as prescribed by the Company must be based upon standards which bear a reasonable relationship to the assurance of payment. The Company may determine whether a customer has established good credit with that Company, except as herein restricted:

1. A customer, who within the last 12 months has not had service disconnected for nonpayment of a bill and has not been liable for disconnection of service for nonpayment of a bill, and the bill is not in dispute, shall be deemed to have established good credit.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.5 Payment for Service Rendered, Cont'd.****3.5.3 Credit Policy, Cont'd.**

2. The Company shall not require a deposit or a guarantee of payment based upon income, home ownership, residential location, employment tenure, nature of occupation, race, color, creed, sex, marital status, age, national origin, or any other criteria which does not bear a reasonable relationship to the assurance of payment or which is not authorized by this chapter.
3. The Company shall not use any credit reports other than those reflecting the purchase of Company services to determine the adequacy of a customer's credit history without the permission in writing of the customer. Any credit history so used shall be bailed to the customer in order to provide the customer an opportunity to review the data. Refusal of a customer to permit use of a credit rating or credit service other than that of a utility shall not affect the determination by the Company as to that customer's credit history.
4. When required, a customer may assure payment by submitting a deposit. A deposit shall not exceed an estimated two months' gross bill or existing two months' bill where applicable. All deposits shall be in addition to payment of an outstanding bill or a part of such bill as has been resolved to the satisfaction of the Company, except where such bill has been discharged in bankruptcy. The Company shall not require a deposit or a guarantee of payment without explaining in writing why that deposit or guarantee is being required and under what conditions, if any, the deposit will be diminished upon return. The deposit shall be refunded to the customer after 12 consecutive months of prompt payment of all bills to that Company. The Company may, at its option, refund the deposit by direct payment or as a credit on the bill. With notice any deposit of a customer shall be applied by the Company to a bill when the bill has been determined by the Company to be delinquent. The Company shall issue a written receipt of deposit to each customer from whom a deposit is received and shall provide a means whereby a depositor may establish a claim if the receipt is unavailable.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.5 Payment for Service Rendered, Cont'd.****3.5.3 Credit Policy, Cont'd.**

Interest shall be paid on deposits in excess of \$20 at the rate set by Arizona Law. Interest on deposits shall be payable from the date of deposit to the date of refund or disconnection. The Company may, at its option, pay the interest at intervals it chooses but at least annually, by direct payment, or as a credit on bills.

Upon termination of service, the deposit with accrued interest shall be credited to the final bill and the balance shall be returned within 45 days to the customer.

3.5.3.B. Guarantee of Payment

The Company may accept, in lieu of deposit, a contract signed by a guarantor satisfactory to the Company whereby payment of a specified sum, not exceeding the deposit requirement, is guaranteed. The term of such contract shall be for no longer than 12 months, but shall automatically terminate after the customer has closed and paid the account with the Company, or at the guarantor's request upon 60 days' written notice to the Company. Upon termination of a guarantee contract or whenever the Company deems same insufficient as to amount or surety, a cash deposit or a new or additional guarantee may be required for good cause upon reasonable written notice to the customer.

The service of any customer who fails to comply with these requirements may be disconnected upon notice as prescribed in Arizona rules. The Company shall mail the guarantor copies of all disconnect notices sent to the customer whose account he has guaranteed unless the guarantor waives such notice in writing.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.5 Payment for Service Rendered, Cont'd.****3.5.4. Payment of Charges**

Charges for facilities and service, other than usage charges, are due monthly in advance. All other charges are payable upon request of the Company. Bills are due on the due date shown on the bill and are payable at any business office of the Company, by U.S. Mail, or at any location designated by the Company. If objection is not received by the Company within three months after the bill is rendered, the items and charges appearing thereon shall be determined to be correct and binding upon the customer. A bill will not be deemed correct and binding upon the customer if the Company has records on the basis of which an objection may be considered, or if the customer has in his or her possession such utility records. If objection results in a refund to the customer, such refund will be with interest at the greater of the unadjusted customer deposit rate or the applicable late payment rate, if any, for the service classification under which the customer was billed. Interest will be paid from the date when the customer overpayment was made, adjusted for any changes in the deposit rate or late payment rate, compounded monthly, until the overpayment is refunded. Notwithstanding the foregoing, no interest will be paid by the Company on customer overpayments that are refunded within 30 days after the overpayment is received by the Company.

Where an objection to the bill involves a superseded service order, the items and charges appearing on the bill shall be deemed to be correct and binding upon the customer if objection is not received by the Company within two months after the bill is rendered.

3.5.5. Return Check Charge

When a check which has been presented to the Company by a customer in payment for charges is returned by the bank, the customer shall be responsible for the payment of a Returned Check Charge of \$25.00.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.5 Payment for Service Rendered, Cont'd.****3.5.6. Late Payment Charges**

3.5.6.A. Customer bills for telephone service are due on the due date specified on the bill. A customer is in default unless payment is made on or before the due date specified on the bill. If payment is not received by the customer's next billing date, a late payment charge of 1.5% will be applied to all amounts previously billed under this Tariff, excluding one month's local service charge, but including arrears and unpaid late payment charges.

3.5.6.B. Late payment charges do not apply to those portions (and only those portions) of unpaid balances that are associated with disputed amounts. Undisputed amounts on the same bill are subject to late payment charges if unpaid and carried forward to the next bill.

3.5.6.C. Late payment charges do not apply to final accounts.

3.5.7. Customer Overpayments

The Company will provide interest on customer overpayments that are not refunded within 30 days of the date the Company receives the overpayment. An overpayment is considered to have occurred when payment in excess of the correct charges for service is made because of erroneous Company billing. The customer will be issued reimbursement for the overpayment, plus interest, or, if agreed to by the customer, credit for the amount will be provided on the next regular Company bill. The rate of interest shall be the greater of the customer deposit interest rate or the Company's applicable Late Payment Charge.

Interest shall be paid from the date when overpayment was made, adjusted for any changes in the deposit rate or late payment rate, and compounded monthly, until the date when the overpayment is refunded. The date when overpayment is considered to have been made will be the date on which the customer's overpayment was originally recorded to the customer's account by the Company.

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3. GENERAL RULES AND REGULATIONS, CONT'D.

3.6 Access to Customer's Premises

The customer shall be responsible for making arrangements or obtaining permission for safe and reasonable access for Company employees or agents of the Company to enter the premises of the customer or any joint user or customer of the customer at any reasonable hour for the purpose of inspecting, repairing, testing or removing any part of the Company's facilities.

3.7 Customer Complaints, Billing Disputes & Inquires

3.7.1. Contact Information

Customers may register any inquiry or complaint at:

Customer Service Department
Clear Rate Telecom, L.L.C.
555 S. Old Woodward, Suite 600
Birmingham, MI 48009

Toll Free: (877) 877-4799
Fax: (877) 877-5225
Email: support@clearrate.com
Web: www.clearrate.com

If customers are unable to resolve a dispute with the Company, customers may submit an inquiry or complaint to:

Arizona Corporation Commission
Utilities Division
1200 W Washington Street
Phoenix, AZ 85007

Phone: (602) 542-4251
Toll Free: (800) 222-7000
Web: <http://eservice.azcc.gov/Utilities/Complaint>

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3. GENERAL RULES AND REGULATIONS, CONT'D.

3.8 Disconnection of Service

3.8.1. Disconnection without Notice

3.8.1.A. The Company may discontinue service to a customer without notice under the following conditions:

1. in the event of tampering with the Company's equipment;
2. in the event of a condition determined to be hazardous to the customer, to other customers of the Company, to the Company's equipment, the public, or to employees of the Company; or
3. in the event of a customer's use of equipment in such a manner as to adversely affect the Company's equipment or the Company's service to others.

3.8.2. Disconnection with Notice

3.8.2.A. The Company may discontinue service to a customer under the following conditions after giving customer five (5) days' (excluding Sundays and legal holidays) notice:

1. for failure of the customer to pay a bill for service when due;
2. for failure of the customer to meet the Company's deposit and credit requirements;
3. for failure of the customer to make proper application for service;
4. for customer's violation of any of the Company's rules on file with the Commission;
5. for failure of the customer to provide the Company reasonable access to its equipment and property;

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3. GENERAL RULES AND REGULATIONS, CONT'D.

3.8 Disconnection of Service, Cont'd.

3.8.2 Disconnection with Notice, Cont'd.

6. for customer's breach of the contract for service between the Company and the customer;
7. for failure of the customer to furnish such service, equipment, and/or rights-of-way necessary to serve said customer as shall have been specified by the Company as a condition of obtaining service; or
8. when necessary for the Company to comply with any order or request of any governmental authority having jurisdiction.

3.8.3. General Restriction on Disconnection

Service will not be disconnected on any Friday, Saturday, Sunday or legal holiday, or at any time when the Company's business offices are not open to the public, except where an emergency exists.

3.8.4. Abandonment or Unauthorized Use of Facilities

- 3.8.4.A. If it is determined that facilities have been abandoned, or are being used by unauthorized persons, or that the customer has failed to take reasonable steps to prevent unauthorized use, the Company may terminate telephone service.
- 3.8.4.B. In the event that telephone service is terminated for abandonment of facilities or unauthorized use and service is subsequently restored to the same customer at the same location:
 1. No charge shall apply for the period during which service had been terminated, and
 2. Reconnection charges will apply when service is restored. However, no charge shall be made for reconnection if the service was terminated due to an error on the part of the Company.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.8 Disconnection of Service, Cont'd.****3.8.5. Change in the Company's Ability to Secure Access**

Any change in the Company's ability (a) to secure and retain suitable facilities and rights for the construction and maintenance of the necessary circuits and equipment or (b) to secure and retain suitable space for its plant and facilities in the building where service is provided to the customer may require termination of a customer's service until such time as new arrangements can be made. No charges will be assessed the customer while service is terminated, and no connection charges will apply when the service is restored.

3.8.6. Emergency Termination of Service

The Company will immediately terminate the service of any customer, on request, when the customer has reasonable belief that the service is being used by an unauthorized person or persons. The Company may require that the request be submitted in writing as a follow-up to a request made by telephone.

3.9 Additional Provisions Applicable to Business Customers**3.9.1. Application of Business Rates****3.9.1.A. Business rates as described in this Tariff apply to service furnished:**

1. In office buildings, stores, factories and all other places of a business nature;
2. In hotels, apartment houses, clubs and boarding and rooming houses except when service is within the customer's domestic establishment and no business listings are provided; colleges, hospitals and other institutions; and in churches except when service is provided to an individual of the clergy for personal use only and business service is already established for the church at the same location;
3. At any location when the listing or public advertising indicates a business or a profession;

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3. GENERAL RULES AND REGULATIONS, CONT'D.

3.9 Additional Provisions Applicable to Business Customers, Cont'd.

3.9.1 Application of Business Rates, Cont'd.

4. At any location where the service includes an extension which is at a location where business rates apply unless the extension is restricted to incoming calls; or
5. At any location where the customer resells or shares exchange service.

3.9.1.B. The use of business facilities and service is restricted to the customer, customers, agents and representatives of the customer, and joint users.

3.9.2. Telephone Number Changes

When a business customer requests a telephone number change, the referral period for the disconnected number is 180 days.

The customer may order a Customized Number where facilities permit for an additional charge.

When service in an existing location is continued for a new customer, the existing telephone number may be retained by the new customer only if the former customer consents in writing, and if all charges against the account are paid or assumed by the new customer.

3.9.3. Dishonored Checks

If a business customer who has received a notice of discontinuance pays the bill with a check that is subsequently dishonored, the account remains unpaid and the Company is not required to issue any additional notice before disconnecting service.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.10 Additional Provisions Applicable to Residential Customers****3.10.1. Application of Rates**

Residential rates as described in this Tariff apply to service furnished in private homes or apartments (including all parts of the customer's domestic establishment) for domestic use. Residential rates also apply in college fraternity or sorority houses, convents and monasteries, and to the clergy for domestic use in residential quarters.

Residential rates do not apply to service in residential locations if the listing indicates a business or profession. Residential rates do not apply to service furnished in residential locations if there is an extension line from the residential location to a business location unless the extension line is limited to incoming calls.

The use of residential service and facilities is restricted to the customer, members of the customer's domestic establishment, and joint users.

3.10.2. Telephone Number Changes

When a residential customer requests a telephone number change, the referral period for the disconnected number is 90 days.

The customer may order a Customized Number where facilities permit for an additional charge.

When service in an existing location is continued for a new customer, the existing number may be retained by the new customer only if the former customer consents in writing, and if all charges against the account are paid or assumed by the new customer.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.10 Additional Provisions Applicable to Residential Customers, Cont'd.****3.10.3. Installment Billing For Nonrecurring Charges**

A residential customer may elect to pay service connection and other nonrecurring charges associated with a service order in monthly installments for up to a 12 month period. When installment billing is requested, all nonrecurring charges associated with a given service order will be included in the calculation of the monthly installment.

Installment billing is subject to the following restrictions:

- 3.10.3.A. Installment billing may be used only by residential customers;
- 3.10.3.B. Charges will be billed in the number of installments of equal dollar amounts as requested by the customer up to a maximum of 12 installments over the course of 12 months;
- 3.10.3.C. A customer may not pay a portion of the charges and then request installment billing for the remaining charges;
- 3.10.3.D. More than one installment plan may be in effect for the same customer at the same time;
- 3.10.3.E. If a customer disconnects service during the installment payment period, all unbilled charges will be included in the final bill rendered;
- 3.10.3.F. A customer may elect to pay the unbilled charges before the expiration of the installment plan;
- 3.10.3.G. Installment billing payments will continue even when an account is temporarily suspended;
- 3.10.3.H. No interest or carrying charges will be applied to the outstanding balance during the installment period.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.10 Additional Provisions Applicable to Residential Customers, Cont'd.****3.10.4. Adjusted Payment Schedule**

A customer on a fixed income (e.g., pension and public assistance) shall be offered the opportunity to pay his or her bills on a reasonable schedule that is adjusted for periodic receipt of income.

3.10.5. Suspension or Termination for Nonpayment

3.10.5.A. Suspension/termination notices may not be issued until at least 25 days after the date of the bill. Bills must be mailed to the customer no later than 6 business days after the date of the bill.

3.10.5.B. After issuing the written notification at least one attempt shall be made during non-working hours to contact the residential customer by telephone before the scheduled date of suspension/termination.

3.10.5.C. Suspension/termination may occur only between 8:00 AM and 7:30 PM on Monday through Thursday.

3.10.5.D. Telephone service may be suspended or terminated for nonpayment of the undisputed portion of a disputed bill or deposit if the customer does not pay the undisputed portion after being asked to do so. Suspended or terminated residential service shall be reconnected within 24 hours following payment or within 24 hours of the end of circumstances beyond the Company's control which delay the reconnection. The Commission may direct that service be reconnected in less than 24 hours.

3.10.6. Dishonored Checks

When a check received from a residential customer is dishonored, the Company shall make two attempts, one outside of normal business hours, to contact the customer within 24 hours. The customer shall be given an additional 24 hours to pay before suspension/termination. The additional notice will be given provided that the customer has not submitted a dishonored check within the past 12 months.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.11 Allowances for Interruptions in Service**

Interruptions in service, which are not due to the negligence of, or non-compliance with the provisions of this Tariff by the Customer, or the operation or malfunction of the facilities, power, or equipment provided by the Customer, will be credited to the Customer as set forth below for the part of the service that the interruption affects. A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under this Tariff.

3.11.1. Credit for Interruptions

3.11.1.A. An interruption period begins when the Customer reports a service, facility, or circuit to be interrupted and releases it for testing and repair. An interruption period ends when the service, facility, or circuit is operative. If the Customer reports a service, facility, or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.

3.11.1.B. For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

3.11.1.C. In the event a customer's service is interrupted otherwise than by negligence or willful act of the customer and it remains out of order for 24 hours after being reported to the Company, adjustments shall be made to the customer, based upon the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for telephone service. If in the case of such interruption, service is restored on or before the day after it is reported or found by the Company, no allowance will be made.

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3. GENERAL RULES AND REGULATIONS, CONT'D.**3.11 Allowances for Interruptions in Service, Cont'd.****3.11.1.D. Credit to Customer:**

Credits attributable to any billing period for interruptions of service shall not exceed the total charges for that period for the service and facilities furnished by the Company rendered useless or substantially impaired.

3.11.1.E. "Interruption" Defined

For the purpose of applying this provision, the word "interruption" shall mean the inability to complete calls either incoming or outgoing or both due to equipment malfunction or human errors. "Interruption" does not include and no allowance shall be given for service difficulties such as slow dial tone, circuits busy or other network and/or switching capacity shortages. Nor shall the interruption allowance apply where service is interrupted by the negligence or willful act of the subscriber or where the Company, pursuant to the terms of the Tariff, suspends or terminates service because of nonpayment of bills due to the Company, unlawful or improper use of the facilities or service, or any other reason covered by the Tariff. No allowance shall be made for interruptions due to electric power failure where, by the provisions of this Tariff, the subscriber is responsible for providing electric power. Allowance for interruptions of message rate service will not affect the subscriber's local call allowance during a given billing period.

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3. GENERAL RULES AND REGULATIONS, CONT'D.

3.11 Allowances for Interruptions in Service, Cont'd.

3.11.2. Limitations on Credit Allowances

No credit allowance will be made for:

- 3.11.2.A. interruptions due to the negligence of, or non-compliance with the provisions of this Tariff, by any party other than the Company, including but not limited to the customer, authorized user, or other common carriers connected to, or providing service connected to, the service of the Company or to the Company's facilities;
- 3.11.2.B. interruptions due to the failure or malfunction of non-Company equipment, including service connected to customer provided electric power;
- 3.11.2.C. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- 3.11.2.D. interruptions of service during any period when the customer has released service to the Company for maintenance purposes or for implementation of a customer order for a change in service arrangements;
- 3.11.2.E. interruptions of service due to circumstances or causes beyond the control of the Company.

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SECTION 4 – CONNECTION CHARGES

4. CONNECTION CHARGES**4.1 Connection Charge****4.1.1. General**

The Connection Charge is a nonrecurring charge which applies to the following: (a) the installation of a new service; (b) the transfer of an existing service to a different location; (c) a change from one class of service to another at the same or a different location; or (d) restoral of service after suspension or termination for nonpayment. Connection Charges are listed with each service to which they apply.

4.1.2. Exceptions to the Charge

4.1.2.A. No charge applies for a change to a service for which a lower monthly rate applies, made within 90 days after any general rate increase, if a lower grade of service is offered in the customer's exchange.

4.1.2.B. No charge applies for one change in the class of residence service, provided that the change is ordered within 90 days of the initial connection of the customer's exchange service.

4.1.2.C. The Company may from time to time waive or reduce the charge as part of a promotion.

4.2 Restoral Charge

A restoral charge applies each time a service is reconnected after suspension or termination for nonpayment but before cancellation of the service, as deemed in Section 1 of this Tariff.

Charge: \$59.00

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4. CONNECTION CHARGES, CONT'D

4.3 Moves, Adds, and Changes

The Company alone may make changes in the location of its lines and equipment. When it is found that a move or change of such lines or equipment has been made by others, the Connection Charge for the underlying service will apply as if the work had been done by the Company.

The customer will be assessed a charge for any move, add or change of a Company service. Move, Add and Change are defined as follows:

Move: The disconnection of existing equipment at one location and reconnection of the same equipment at a new location in the same building or in a different building on the same premises.

Charge: \$59.00

Add: The addition of a vertical service to existing equipment and/or service at one location.

Charge: \$59.00

Change: Change - including rearrangement or reclassification - of existing service at the same location.

Charge: \$11.95

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4. CONNECTION CHARGES, CONT'D

4.4 Maintenance Visit Charge

An MVC, a/k/a Trouble Location Charge, describes that process where the Company determines whether the trouble reported by the Customer is due to the Company or to the Customer. A Network Interface Device (NID) is one form of a Company Service demarcation point that provides a customer with a test point where he/she can pretest service conditions before initiating a trouble report to the Company. Where a NID exists, if the Company is able to test for Dial Tone at the NID and the problem proves to be beyond the NID (within Customer premises) a charge for trouble location is applicable. In the event there is no NID and/or the Company is unable to test for dial tone, then no trouble location charge will be assessed. In those cases where the customer has bought an inside wire maintenance warranty/plan (a non-regulated service) from the Company no trouble location charge will be applicable regardless of the dial tone test results or whether a NID exists or not.

Maintenance Visit Charge, per visit:

Per Hour	\$119.00
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All wire and equipment charges are in addition to any maintenance visit charges.

Maintenance False Dispatch Charge, per visit: \$99.00

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SECTION 4 – SERVICE CHARGES AND SURCHARGES

5. SERVICE CHARGES AND SURCHARGES**5.1 General**

Carrier Presubscription is a procedure whereby a Customer designates to the Company the carrier that the Customer wishes to be the carrier of choice for IntraLATA and InterLATA toll calls. Such calls are automatically directed to the designated carrier, without the need to use carrier access codes or additional dialing to direct the call to the designated carrier. Presubscription does not prevent a Customer who has presubscribed to an IntraLATA or InterLATA toll carrier from using carrier access codes or additional dialing to direct calls to an alternative long distance carrier on a per call basis.

5.1.1. Presubscription Options

Customers may select the same carrier or separate carriers for IntraLATA and InterLATA long distance. The following options for long distance Presubscription are available:

Option A: Customer selects the Company as the presubscribed carrier for IntraLATA and InterLATA toll calls subject to presubscription.

Option B: Customer may select the Company as the presubscribed carrier for IntraLATA calls subject to presubscription and some other carrier as the presubscribed carrier for interLATA toll calls subject to presubscription.

Option C: Customer may select a carrier other than the Company for IntraLATA toll calls subject to presubscription and the Company for InterLATA toll calls subject to presubscription.

Option D: Customer may select the carrier other than the Company for both IntraLATA and InterLATA toll calls subject to presubscription

Option E: Customer may select two different carriers, neither being the Company for IntraLATA and InterLATA toll calls. One carrier to be the Customers' primary intraLATA interexchange carrier. The other carrier to be the Customer's primary InterLATA interexchange carrier.

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5. SERVICE CHARGES AND SURCHARGES, CONT'D.**5.1 General, Cont'd.****5.1.1 Presubscription Options, Cont'd**

Option F: Customer may select a carrier other than the Company for no presubscribed carrier for IntraLATA toll calls subject to presubscription which will require the Customer to dial a carrier access code to route all IntraLATA toll calls to the carrier of choice for each call.

5.1.2. Rules and Regulations**5.1.3. Customers of record will retain their primary interexchange carrier(s) until they request that their dialing arrangements be changed. Customers of record or new**

Customers may select either Options A, B, C, D, E or F for intraLATA Presubscription.

Customers may change their selected Option and/or presubscribed toll carrier at any time subject to charges specified in 4.1.5 below.

5.1.4. Presubscription Procedures

A new Customer will be asked to select intraLATA and interLATA toll carriers at the time the Customer places an order to establish local exchange service with the Company. The Company will process the Customer's order for service. All new Customers' initial requests for intraLATA toll service presubscription shall be provided free of charge.

If a new Customer is unable to make selection at the time the new Customer places an order to establish local exchange service, the Company will read a random listing of all available intraLATA and interLATA carriers to aid the Customer in selection. If selection is still not possible, the Company will inform the Customer that he/she will be given 90 calendar days in which to inform the Company of his/her choice for primary toll carrier(s) free of charge. Until the Customer informs the Company of his/her choice of primary toll carrier, the Customer will not have access to long distance services on a presubscribed basis, but rather will be required to dial a carrier access code to route all toll calls to the carrier(s) of choice. Customers who inform the Company of a choice for toll carrier presubscription within the 90 day period will not be assessed a service charge for the initial Customer request.

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5. SERVICE CHARGES AND SURCHARGES, CONT'D.**5.1 General, Cont'd.****5.1.4 Presubscription Procedures, Cont'd**

Customers of record may initiate a intraLATA or interLATA presubscription change at any time, subject to the charges specified in 4.1.5 below. If a Customer of record inquires of the Company of the carriers available for toll presubscription, the Company will read a random listing of all available intraLATA carriers to aid the Customer in selection.

5.1.5. Presubscription Charges**5.1.5.A. Application of Charges**

After a Customer's initial selection for a presubscribed toll carrier and as detailed in Paragraph 4.1.4 above, for any change thereafter, an Presubscription Change Charge, as set for the below will apply. Customers who request a change in intraLATA and interLATA carriers with the same order will be assessed a single charge per line.

5.1.5.B. Nonrecurring Charges

Per business or residence line, trunk, or port:	
Initial Line, or Trunk or Port	\$11.95
Additional Line, Trunk or Port	\$11.95

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5. SERVICE CHARGES AND SURCHARGES, CONT'D.**5.2 Telephone Surcharges****5.2.1. General**

The Company reserves the right to bill any and all applicable taxes, fees and surcharges in addition to normal rates and charges for Services provided to the Customer. Taxes and fees include, but are not limited to, Federal Universal Service Fund surcharge, State Universal Service Fund surcharge, Federal Access Charge, Carrier Access Charge, Federal Excise Tax, State Sales Tax, and Municipal Tax, E911, telecommunications relay and Local Number Portability surcharges. Unless otherwise specified in this Tariff, such taxes, fees and surcharges are in addition to rates as quoted in this Tariff and will be itemized separately in Customer invoices.

In addition to the rates and charges applicable according to the rules and regulations of this Tariff, various surcharges may apply to the customer's monthly bill statement. The Customer is responsible for payment of any and all such fees, charges and taxes, however designated, (including without limitation sales, use, gross receipts, excise, access or other taxes but excluding taxes on the Company's net income) imposed by any local, state, or federal government on or based upon the provision, sale or use of Network Services. Fees, charges, and taxes imposed by a city, county, or other political subdivision will be collected only from those customers receiving service within the boundaries of that subdivision, or as deemed taxable by the political subdivision.

5.2.2. E911 Surcharge**5.2.2.A. Description:**

911 has been designated as the "Universal Emergency Number" for all citizens throughout the United States to request emergency assistance. The purpose of the fee is to "pay for" the cost of such systems. Consumers do not pay this fee in order to be provided with E911 service. A consumer has access to E911 whether or not the locality in which the customer lives has imposed the monthly charge line that appears on their bill. There is no per-call charge for calling 911.

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5. SERVICE CHARGES AND SURCHARGES, CONT'D.**5.1 Telephone Surcharges, Cont'd.****5.2.2 E911 Surcharge****5.2.2.B. Range of Rates**

All Customers will be assessed a per line surcharge to support local E911 Service Program. The E911 Surcharge will be based on a monthly snapshot of lines associated with each Customer's account. No fractional debits or credits will be given. This surcharge will appear as a separate line item on the Customer's bill. The amount of the surcharge will be equal to the per line assessment paid by the Company as determined by local jurisdictional assessments rounded up to the nearest whole cent, and may vary from time to time as required by Arizona law, Commission rules or local jurisdiction requirements.

5.2.3. Arizona Universal Service Fund (AUSF)

In addition to all other taxes and fees that are listed herein or passed through in the normal course of business (e.g. sales tax), the Company shall also add an amount to be collected to each bill for recovery of the Arizona Universal Service Fund (AUSF).

Towards the ultimate goal that basic service be available and affordable to all citizens of the state, the Arizona Corporation Commission has created support mechanisms to assist in the provision of such service in high-cost areas. Pursuant to Arizona Administrative Code, R 14-2, Article 12, the Rule directs that the surcharge will be levied on all telecommunications service purchased by end-users.

The Arizona Universal Service Fund (AUSF) surcharge will be the amount set forth in the Arizona Administrative Code, R 14-2, Article 12. The percentage and amounts set forth will be subject to periodic adjustment by the Commission.

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SECTION 5 – LOCAL EXCHANGE SERVICES

6. LOCAL EXCHANGE SERVICE**6.1 General**

Local exchange service is offered to residential and business Customers on a presubscription basis from equal access originating end offices only. Service is provided on a term basis only. Unless other specified, the minimum term is one (1) year. Rates for service may vary by call type and/or term commitment. Usage rates, per call charges and monthly fees may apply. In addition, applicable Service Order and other non-recurring charges may apply. Call timing is defined in the description for each service. Service is available 24 hours a day, 7 days a week. Service is available where technically feasible and where facilities permit.

6.1.1. Charges Based on Duration of Use

- 6.1.1.A. Where charges for a service are specified based on the duration of use, such as the duration of a telephone call, the following rules apply:
- 6.1.1.B. Calls are measured in durational increments identified for each service. All calls that are fractions of a measurement increment are rounded-up to the next whole unit.
- 6.1.1.C. Timing on completed calls begins when the call is answered by the called party. Answering is determined by hardware answer supervision in all cases where this signaling is provided by the terminating local carrier and any intermediate carrier(s). Timing for operator service person-to-person calls start with completion of the connection to the person called or an acceptable substitute, or to the PBX station called.
- 6.1.1.D. Timing terminates on all calls when the calling party hangs up or the Company network receives an off-hook signal from the terminating carrier.
- 6.1.1.E. Calls originating in one time period and terminating in another will be billed in proportion to the rates in effect during different segments of the call.
- 6.1.1.F. All times refer to local time.

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6. LOCAL EXCHANGE SERVICE, CONT'D.**6.1 General, Cont'd.****6.1.2. Basic Local Exchange Service**

Basic Local Exchange Service provides a Customer with a telephonic connection to, and a unique telephone number on, the Company switching network that enables the Customer to:

- 6.1.2.A. receive calls from other stations on the public switched telephone network;
- 6.1.2.B. access the Company Local Calling Services and other Services as set forth in this Tariff;
- 6.1.2.C. access interexchange calling services of the Company and of other carriers;
- 6.1.2.D. access (at no additional charge) to Company operators and business office for service related assistance;
- 6.1.2.E. access toll-free telecommunications services such as 800 NPA; and access toll-free emergency services by dialing 0 or 9-1-1 (where available);
- 6.1.2.F. access relay services for the hearing and/or speech impaired.

Basic Local Exchange Services cannot be used to originate calls to caller-paid information services (e.g., 900, 976) provided by other companies. Calls to those numbers and other numbers used for caller-paid information services will be blocked by the Company switch. Each Basic Local Exchange Service corresponds to one or more telephonic communications channels that can be used to place or receive one call at a time.

Individual line Residence and Business Basic Local Exchange Service is comprised of exchange access lines defined as follows:

Exchange Access Line - The service central office line equipment and all the Company plant facilities up to the demarcation point. These facilities are Company-provided and maintained and provide access to and from the telecommunications network for message toll service and for local calling appropriate to the Tariff use offering selected by the Customer.

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6. LOCAL EXCHANGE SERVICE CONT'D.**6.2 Telephone Plan Tariff**

The following plans include unlimited local, unlimited regional and unlimited long distance calling. The calling features included in this plan are: caller ID, call waiting, call waiting ID, voicemail and line manager (inside wire maintenance).

The following plans also require a one (1) year commitment. If the customer breaches the one (1) year commitment an early termination fee is charged to the customer's account.

	Maximum Rates
Residential Easy Talk Plan	\$29.99
Business Straight Talk Package	\$39.99
Early Termination Fee:	\$99.00

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SECTION 7 – SUPPLEMENTAL SERVICES

7. SUPPLEMENTAL SERVICES**7.1 Directory Assistance Services****7.1.1. General**

A Customer may obtain assistance, for a charge, in determining a telephone number by dialing Directory Assistance (“DA”).

A call to DA is considered completed whether or not the number(s) requested are available from DA records.

Direct-dialed calls to DA are exempt from rates and regulations when placed from:

- 7.1.1.A. 10 free calls per month from main business and/or residence telephone lines or PBX trunk lines;
- 7.1.1.B. all directory assistance calls made by customers who are 65 years old or older;
- 7.1.1.C. a single-line registered main telephone exchange line of a handicapped user. A main line may be registered for exemption with the carrier in those instances where one of the users of the line is considered to be legally blind, or visually or physically handicapped as defined by the Federal Register, Vol. 35 #126. Where a user’s handicap prevents the dialing of a telephone in a conventional manner or permits only the dialing of “0”, those calls placed from the registered line, and not directly dialed, will also be exempt;
- 7.1.1.D. all pay telephones; and
- 7.1.1.E. also exempt are directory assistance calls for telephone numbers which are non- listed, or non-listed and non-published, or when the DA operator provides an incorrect number. The Customer must inform the Company of the error in order to receive credit.

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7. SUPPLEMENTAL SERVICES CONT'D.**7.1 Directory Assistance Services, Cont'd.****7.1.2. Rates**

Unless one of the exceptions listed in Section 7.1.1 above applies, the charges as shown below apply for each request made to the DA operator:

	Maximum Rate
Local DA	\$1.50

7.2 Operator Services

The Company's operator services, available to presubscribed Customers, are accessible on a twenty- four (24) hour per day seven (7) days per week basis. In addition to the per call service charge, usage rates apply. The types of calls handled are as follows:

Customer Dialed Calling/Credit Card Call – This charge applies in addition to usage charges for station to station calls billed to an authorized Calling Card or Commercial Credit Card. The Customer must dial the destination telephone number where the capability exists for the Customer to do so. A separate rate applies in the event operator assistance is requested for entering the Customer's card number for billing purposes.

Operator Dialed Calling/Credit Card Call – This charge applies in addition to usage charges for station to station calls billed to an authorized telephone Calling Card or Commercial Credit Card and the operator dials the destination telephone number at the request of the Customer.

Person-to-Person – This charge applies in addition to usage charges for calls placed with the assistance of a Company operator to a particular party at the destination number. This charge applies regardless of billing method, including but not limited to billing to a Calling Card, Commercial Credit Card, Collect, by deposit of coins in Pay Telephones, or to a Third Party. Charges do not apply unless the specified party or an acceptable substitute is available.

Third Party Billed – Provides the Customer with the capability to charge a local call to a third number which is different from the called or calling party. The party answering at the third number has the option to refuse acceptance of the charges in advance or when queried by the operator.

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Clear Rate Telecom, L.L.C.
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7. SUPPLEMENTAL SERVICES, CONT'D.**7.2 Operator Services, Cont'd.**

Collect Calls – Provides the Customer with the capability to charge a call to the called party. On the operator announcement of a collect call, the called party has the option to refuse acceptance of charges in advance or when queried by the operator.

7.2.1. Local Usage Charges

Usage charges for local operator assisted calls are those usage charges that would normally apply to the calling party's service. In addition to usage charges, an operator assistance charge applies to each call.

7.2.2. Per Call Service Charges

	Maximum Rates
Operator Assisted:	
Collect	\$2.00
3rd Party Billed	\$2.00
Person-to-Person	\$4.50

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7. SUPPLEMENTAL SERVICES, CONT'D.**7.3 Directory Listing Service****7.3.1. General**

For each Customer of Company provided Local Exchange Access Service, the Company shall arrange for the listing of the Customer's main billing telephone number in the directory(s) published by the dominant Local Exchange Carrier in the area. The following rules and charges apply to listings in the white pages of the telephone directory and to the Directory Assistance records.

Only information necessary to identify the Customer is included in the listings. The Company may use abbreviations in listings. The Company may reject a listing, which is judged to be advertising. It may also reject a listing it judges to be objectionable. A name made up by adding a term such as Company, Shop, Agency, Works, etc. to the name of a commodity or service will not be accepted as a listing unless the subscriber is legally doing business under that name.

A name may be repeated in the white pages only when a different address or telephone number is used.

7.3.2. Listings**7.3.2.A. Primary (Published) Listings**

The Primary (Published) listing is included with local service at no additional charge and consists of the following:

1. The name under which a business is conducted by the Customer
2. The address of the Customer
3. The main telephone number of the Customer.

This information will appear in the white pages of the Local Telephone Directory and the Directory Assistance Database.

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7. SUPPLEMENTAL SERVICES, CONT'D.**7.4 Directory Listing Service, Cont'd.****7.4.2 Listings, Cont'd.****7.3.2.B. Non-Published Service**

Non-published service means that the Customer's telephone number is not listed in the local telephone directory, nor does it appear in the Directory Assistance Records. This service is subject to the rules and regulations for E911 service, where applicable. The Company will complete calls to a non-published number only when the caller dials direct or gives the operator the number. No exceptions will be made, even if the caller says it is an emergency. If a published listing is desired at a later date, there may be a delay in publishing the listing.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-published number in the directory or disclosing it to some. If, in error, the telephone number is published in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-published service.

The subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-published service or the disclosing of said number to any person.

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7. SUPPLEMENTAL SERVICES, CONT'D.**7.4 Directory Listing Service, Cont'd.****7.4.2 Listings, Cont'd.****7.3.2.C. Non-Listed Service**

Non-listed service means that the Customer's telephone number is not listed in the local telephone directory, but it does appear in the Directory Assistance Records.

This service is subject to the rules and regulations for E911 service, where applicable. The Company will complete calls to a non-listed number.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-listed number in the directory or disclosing it to some. If, in error, the telephone number is listed in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-listed service.

The subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-listed service or the disclosing of said number to any person.

7.3.3. Additional Listings**7.3.3.A. Duplicate Listing**

A listing of another name by which a Customer is known such as abbreviated name, a name commonly spelled in more than one way or a name consisting of several words, which the public commonly rearranges.

Cross Reference is a type of Duplicate Listing. It refers to the name under which a complete listing is shown. Cross Reference can be temporary caused by a change of ownership or firm name, which may be shown with a reference to the successor.

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7. SUPPLEMENTAL SERVICES, CONT'D.**7.4 Directory Listing Service, Cont'd.****7.4.3 Additional Listings, Cont'd.****7.3.3.B. Alternate Telephone Number Listing**

A listing that refers calling parties to another telephone number at certain hours or on certain days or in case no answer is received on the call to the primary number.

7.3.3.C. Foreign Listing

Any of the types of additional listings covered herein may be provided in a different directory or in the same directory under a different geographical heading from that under which the Customer is normally listed.

7.3.4. Monthly Maximum Rates

	Residential	Business
Non-published Service	\$5.00	\$5.95
Non-listed Service	\$2.50	\$2.50

A service order charge will apply, as set forth in Section 5, if not ordered at the time of installation.

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SECTION 8 – TOLL SERVICES

8. TOLL SERVICES

8.1 General

Distance service is only available in conjunction with local service.

8.2 Nationwide Directory Assistance Service

The charges as shown below apply for each request made to the Directory Assistance operator:

	Maximum Rate
Nationwide Directory Assistance (555-1212)	\$1.50

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SECTION 9 – SPECIAL SERVICES AND PROGRAMS

9. SPECIAL SERVICES AND PROGRAMS

9.1 Call Tracing

9.1.1. General

Call Tracing allows for the identification and recording of the telephone numbers of some or all of the incoming calls to the telephone line of a customer.

9.1.2. Definitions

9.1.2.A. Customers – means a person, firm, partnership, limited liability Company, corporation, municipality, cooperative association or organization, governmental agency, or other entity receiving telecommunications services.

9.1.2.B. Customer-originated call-tracing service – means a customer-activated, call-specific form of call tracing available as part of a set of services called Customer Local Area Signaling Service (“CLASS”).

9.1.2.C. Emergency – means a situation that appears to present immediate danger to person or property.

9.1.2.D. Investigative or law enforcement officer – means an officer of the United States, a state, or a political subdivision of the United States or a state, who is empowered by law to investigate or make arrests for crimes related to communications, or an attorney authorized by law to prosecute those crimes.

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9. SPECIAL SERVICES AND PROGRAMS, CONT'D.**9.1 Call Tracing, Cont'd.****9.1.3. Terms and Conditions**

9.1.3.A. Call Tracing will be provided when requested by both a customer and an investigative or law enforcement officer and the customer has provided consent. Normally written consent will be required. In emergencies, call tracing will be provided upon receiving oral consent from the customer. The customer will be requested to provide written consent promptly and advised to seek the assistance of an investigative or law enforcement officer.

9.1.3.B. Information regarding the originating telephone numbers will be disclosed only to investigative or law enforcement officers, not to customers receiving call-tracing services.

9.1.3.C. The Company will work with investigative or law enforcement officers to determine how long call-tracing services should be provided.

9.1.3.D. The Company may provide customer-originated call-tracing service (CLASS Call Trace) as an alternative to Call Tracing in response to a Call Tracing request from a customer who is located in an exchange where CLASS Call Trace is available and where CLASS Call Trace will function as accurately as Call Tracing.

9.1.4. Rates**9.1.4.A. Call Tracing Setup****Maximum Rates**

- | | |
|---------------------------------|---------|
| 1. During Normal Business Hours | \$11.95 |
| 2. Outside of Business Hours | \$11.95 |

9.1.4.B. Extension of Call Tracing period at the Request of investigative or law Enforcement agency.

No Charge

9.1.4.C. Provision of Call Tracing information to investigative or law enforcement agency

No Charge

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9. SPECIAL SERVICES AND PROGRAMS, CONT'D.**9.2 Restriction Services****9.2.1. Toll Restriction****9.2.1.A. Description**

Toll blocking allows end users to block direct-dialed long distance calls from their telephones. Full toll blocking blocks all calls beginning with a 1, 10XXX, or 011 numbers. Telephone lines with toll blocking can still receive toll calls and can be used to call toll-free numbers, operator-assisted collect or third party calls, and calling card calls.

9.2.1.B. Terms and Conditions

1. This service is offered to individual line residence, individual line business and dial switch type customers.
2. Provision of Toll Restriction does not alleviate the customer's responsibility for completed toll calls.
3. Toll Restriction will be provided at no charge customers upon request.

9.2.2. Bill Screening Blocking**9.2.2.A. Description**

Bill screening blocking is a data base-driven service that allows end users to block collect calls or third party billed calls. To provide the service, local telephone companies sell customer data bases containing their customers' requests to block incoming collect or third party calls. Carriers who buy the data bases are able to respect customer preferences and avoid disputed bills for unsolicited calls. Because LECs charge carriers for each query to the data base, some carriers prefer not to subscribe to the data base service. For this reason, LECs cannot guarantee that their customers' preferences will always be heeded.

9.2.2.B. Terms and Conditions

1. Blocking of information will be provided at no charge to residential and business customers on all local service lines and will be provided on any line where it is technically possible.

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9. SPECIAL SERVICES AND PROGRAMS, CONT'D.**9.2 Restriction Services, Cont'd.****9.2.3. Blocking Caller Identification****9.2.3.A. Description**

Per Call blocking enables a customer to control the disclosure of telephone numbers to a subscriber of a Calling Number Delivery. A customer must dial an activation code before each call to block delivery of number information.

9.2.3.B. Terms and Conditions

1. Per call blocking will be provided at no charge to residential and business customers on all local service lines and will be provided on any line where it is technically possible.

9.2.4. Per Line Blocking**9.2.4.A. Description**

Per Line blocking provides a permanent private indicator on a customer's line. The number of that line will not be delivered to any subscriber of Calling Number Delivery. Emergency 911 calls will not be affected.

9.2.4.B. Terms and Conditions

1. Residential Line Blocking will be available to customers at no charge.
2. Business Line Blocking will be available at no charge for the following types of customers: law enforcement agencies, shelters for battered persons, government agencies engaged in undercover operations, and business customers who have been accepted as having demonstrated a need for nondisclosure.

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9. SPECIAL SERVICES AND PROGRAMS, CONT'D.**9.2 Restriction Services, Cont'd.****9.2.4 Per Line Blocking, Cont'd.**

3. Other business customers that do not fit the above requirements shall demonstrate to the Company a special need under criteria set forth below:

Line blocking for business customers is available only for those business customers demonstrating a need. The demonstration of need is waived for law enforcement centers, programs for battered persons, and government agencies engaged in undercover operations. Other business customers wanting line blocking must demonstrate in writing that disclosure of the calling number could endanger the caller, other persons, or property. The Company will promptly notify the customer of its decision. A business customer who does not agree with the Company's decision may appeal in writing to the Arizona Corporation Commission Utilities Division.

9.2.5. Anonymous Call Rejection**9.2.5.A. Description**

While this feature is activated, incoming blocked calls are routed to an announcement in the central office that will indicate that the called party has chosen to reject blocked calls and the call will not be completed.

9.2.5.B. Terms and Conditions

1. This service will be provided to all subscribers of Calling Number Delivery at no charge an in the inactive state.

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SECTION 9 – SPECIAL ARRANGEMENTS

10. SPECIAL ARRANGEMENTS**10.1 Special Construction****10.1.1. Basis for Charges**

Basis for Charges where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's Tariffs, charges will be based on the costs incurred by the Company (including return) and may include:

- 10.1.1.A. nonrecurring charges;
- 10.1.1.B. recurring charges;
- 10.1.1.C. termination liabilities; or
- 10.1.1.D. combinations of A, B, and C.

10.1.2. Basis for Cost Computation

The costs referred to in 9.1.1 preceding may include one or more of the following items to the extent they are applicable:

- 10.1.2.A. Costs to install the facilities to be provided including estimated costs for the rearrangements of existing facilities. These costs include:
 - 1. equipment and materials provided or used;
 - 2. engineering, labor, and supervision;
 - 3. transportation; and
 - 4. rights of way and/or any required easements.
- 10.1.2.B. Cost of maintenance.
- 10.1.2.C. Depreciation on the estimated cost installed of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage.
- 10.1.2.D. Administration, taxes, and uncollectible revenue on the basis of reasonable average cost for these items.

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10. SPECIAL ARRANGEMENTS, CONT'D.**10.1 Special Construction, Cont'd.****10.1.2 Basis for Cost Computation, Cont'd.**

- 10.1.2.E. License preparation, processing, and related fees.
- 10.1.2.F. Tariff preparation, processing and related fees.
- 10.1.2.G. Any other identifiable costs related to the facilities provided; or,
- 10.1.2.H. An amount for return and contingencies.

10.1.3. Termination Liability

To the extent that there is no other requirement for use by the Company, a termination liability may apply for facilities specially constructed at the request of a customer.

10.1.3.A. The period on which the termination liability is based is the estimated service life of the facilities provided.

10.1.3.B. The amount of the maximum termination liability is equal to the estimated amounts (including return) for:

1. Costs to install the facilities to be provided including estimated costs for the rearrangements of existing facilities. These costs include:
 - (a) equipment and materials provided or used;
 - (b) engineering, labor, and supervision;
 - (c) transportation; and
 - (d) rights of way and/or any required easements;
2. license preparation, processing, and related fees;
3. Tariff preparation, processing and related fees;
4. cost of removal and restoration, where appropriate; and
5. any other identifiable costs related to the specially constructed or rearranged facilities.

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10. SPECIAL ARRANGEMENTS, CONT'D.**10.1 Special Construction, Cont'd.****10.1.3 Termination Liability, Cont'd.**

10.1.3.C. The termination liability method for calculating the unpaid balance of a term obligation is obtained by multiplying the sum of the amounts determined as set forth in Subsection B preceding by a factor related to the unexpired period of liability and the discount rate for return and contingencies. The amount determined in Subsection B preceding shall be adjusted to reflect the redetermined estimated net salvage, including any reuse of the facilities provided. This amount shall be adjusted to reflect applicable taxes.

10.2 Non-Routine Installation and/or Maintenance

At the customer's request, installation and/or maintenance may be performed outside the Company's regular business hours, or (in the Company's sole discretion and subject to any conditions it may impose) in hazardous locations. In such cases, charges based on the cost of labor, material, and other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

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10. SPECIAL ARRANGEMENTS, CONT'D.**Individual Case Basis ("ICB") Arrangements**

Rates for ICB arrangements will be developed on a case-by-case basis in response to a bona fide request from a customer or prospective customer for service which vary from Tariffed arrangements. Rates quoted in response to such requests may be different for Tariffed service than those specified for such service in the Rate Attachment. ICB rates will be offered to customers in writing and will be made available to similarly situated customers. A summary of each ICB contract pricing arrangement offered pursuant to this paragraph will be filed as an addendum to this Tariff within 30 days after the contract is signed by both the Company and the customer. The following information will be included in the summary:

- LATA and type of switch
- The V&H distance from the central office to the customer's premises
- Service description
- Rates and charges
- Quantity of circuits
- Length of the agreement.

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ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment B.2

Proposed Arizona Tariff No. 2
Telecommunications Access Services

ACCESS SERVICES TARIFF

**TELECOMMUNICATIONS ACCESS SERVICES TARIFF
OF
CLEAR RATE TELECOM, L.L.C.
FOR THE STATE OF
ARIZONA**

This tariff includes the rates, charges, terms and conditions of service for the provision of intrastate access telecommunications services in the State of Arizona by Clear Rate Telecom, L.L.C., ("Clear Rate") with principal offices located at 555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009. This tariff is on file with the Arizona Corporation Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Effective Date: _____

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ACCESS SERVICES TARIFF

CHECK SHEET

The pages of this tariff, as listed below, are effective as of the date shown. Sheets with the effective date blank are effective as of _____, the original effective date of this tariff. Revised sheets contain all changes from the original tariff that are in effect as of the date indicated.

<u>Page</u>	<u>Revision</u>	<u>Effective</u>	<u>Page</u>	<u>Revision</u>	<u>Effective</u>	<u>Page</u>	<u>Revision</u>	<u>Effective</u>
1	Original		26	Original		51	Original	
2	Original		27	Original		52	Original	
3	Original		28	Original		53	Original	
4	Original		29	Original		54	Original	
5	Original		30	Original		55	Original	
6	Original		31	Original		56	Original	
7	Original		32	Original		57	Original	
8	Original		33	Original		58	Original	
9	Original		34	Original		59	Original	
10	Original		35	Original		60	Original	
11	Original		36	Original		61	Original	
12	Original		37	Original		62	Original	
13	Original		38	Original		63	Original	
14	Original		39	Original		64	Original	
15	Original		40	Original		65	Original	
16	Original		41	Original		66	Original	
17	Original		42	Original		67	Original	
18	Original		43	Original				
19	Original		44	Original				
20	Original		45	Original				
21	Original		46	Original				
22	Original		47	Original				
23	Original		48	Original				
24	Original		49	Original				
25	Original		50	Original				

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ACCESS SERVICES TARIFF

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ACCESS SERVICES TARIFF

EXPLANATION OF SYMBOLS

C	To signify changed regulation
D	To signify discontinued rate or regulation
I	To signify increase
M	To signify matter relocated without change
N	To signify new rate or regulation
R	To signify reduction
S	To signify reissued matter
T	To signify a change in text but no change in rate or regulation
Z	To signify a correction

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ACCESS SERVICES TARIFF

TARIFF FORMAT

- A.** Page Numbering - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially, however, new pages are occasionally added to the tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B.** Page Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th Revised Page 14 cancels the 3rd Revised Page 14. Because of various suspension periods, deferrals, etc. the Commission follows in its tariff approval process, the most current page number on file with the Commission is not always the tariff in effect. Consult the Check Sheet for the page currently in effect.
- C.** Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
 - 2.1
 - 2.1.1
 - 2.1.1.A.
 - 2.1.1.A.1.
 - 2.1.1.A.1.(a)
 - 2.1.1.A.1.(a).I.
 - 2.1.1.A.1.(a).I.(i).
 - 2.1.1.A.1.(a).I.(i).(1)
- D.** Check Sheets - When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.) The tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Commission.

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ACCESS SERVICES TARIFF

SECTION 1 - DEFINITIONS AND ABBREVIATIONS

Access Code - Denotes a uniform code assigned by the Company to an individual End User. The code has the form 101XXXX or 950-XXXX.

Access Line - An arrangement which connects an End User's local exchange line to a Company-designated switching center or point of presence.

Access Minutes - The increment for measuring usage of exchange facilities for the purpose of calculating chargeable usage.

Access Service Request (ASR) - The service order form used by access service Customers and the Company to establish, move, or rearrange access services provided by the Company.

Access Tandem - A switching system that provides a traffic concentration and distribution function for originating or terminating traffic between End Offices and the Customer's Premises or Point of Presence.

Answer Supervision - The transmission of the switch trunk equipment supervisory signal (off-hook or on-hook) to a carrier's Point of Presence or Customer's or End User's terminal equipment as an indication that the called party has answered or disconnected.

Automatic Number Identification (ANI) - The automatic transmission of a caller's billing account telephone number to a local exchange company, interexchange carrier or a third party Customer. The primary purpose of ANI is for billing toll calls.

Bit - The smallest unit of information in a binary system of notation.

Bps - Bits per second. The number of bits transmitted in a one second interval.

Call - A Customer or End User attempt for which the complete address code (e.g., 0-, 911, or 10 digits) is provided to the Serving Wire Center, End Office or Access Tandem Switch.

Casual Calling - Where access to the Company's network and the subsequent use of service by the Customer is initiated through the dialing of a toll-free number or Access Code. Casual Calling allows non-Pre subscribed End Users to utilize the services of the Company.

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ACCESS SERVICES TARIFF

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D.)

Central Office - The premises of the Company or another local exchange carrier containing one or more switches where Customer or End User station loops are terminated for purposes of interconnection to other station loops, trunks or access facilities.

Channel - A communications path between two or more points.

CIC - An interexchange carrier identification code.

Commission - Refers to the Arizona Corporation Commission, unless otherwise indicated.

Company or Carrier - Used throughout this tariff to indicate Clear Rate Telecom, L.L.C.

Constructive Order - Delivery of calls to or acceptance of calls from the Customer's End Users over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly, the selection of the Customer by an End User as the End User's PIC constitutes a Constructive Order for switched access by the Customer.

CPE - Customer Premises Equipment. All Terminal Equipment or other communications equipment and/or systems provided by the Customer for use with the Company's facilities and services.

Customer - Any person, firm, partnership, corporation or other entity which uses service under the terms and conditions of this tariff and is responsible for the payment of charges. In most contexts, the Customer is an Interexchange Carrier utilizing the Company's Switched or Dedicated Access services described in this tariff to reach its End Users.

Customer Premises - The premises specified by the Customer for termination of access services. Typically an Interexchange Carrier's Point of Presence.

Dedicated Access - Where originating or terminating access between an End User and an Interexchange Carrier are provided via dedicated facilities, circuits or channels. A method of reaching the Customer's communication and switching systems whereby the End User is connected directly to the Customer's Point of Presence without utilizing the services of the local switched network.

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D.)

DS0 - Digital Signal Level 0; a dedicated, full-duplex digital channel with line speeds of 2.4, 4.8, 9.6, 19.2, 56 or 64 Kbps.

DS1 - Digital Signal Level 1; a dedicated, high-capacity, full-duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Bipolar with 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe (ESF) formats. DS1 Service has the equivalent capacity of 24 Voice Grade or DS0 services.

DS3 - Digital Signal Level 3; a dedicated, high-capacity, full-duplex channel with a line speed of 44.736 Mbps isochronous serial data having a line code of bipolar with three zero substitution (B3ZS). Equivalent capacity of 28 DS1 services.

Dual Tone Multifrequency (DTMF) - Tone signaling, also known as touch tone signaling.

End Office - The Central Office from which the End User's Premises would normally obtain local exchange service and dial tone from the Company or another local exchange company.

End Office Switch - A Company switching system where Customer or End User station loops are terminated for purposes of interconnection to other station loops, trunks or access facilities. In most contexts, the End User is connected via station loops or trunks to an End Office Switch.

End User - Any person, firm, partnership, corporation or other entity which uses the service of the Company under the terms and conditions of this tariff. In most contexts, the End User is the customer of an Interexchange Carrier who in turn utilizes the Company's Switched or Dedicated Access services described in this tariff to provide the End User with access to the IC's communication and switching systems.

End User Premises - The premises specified by the Customer or End User for termination of access services at the End User's physical location.

Equal Access - Where the local exchange company Central Office provides interconnection to Interexchange Carriers with Feature Group D circuits. In such End Offices, End Users can presubscribe their telephone line(s) to their preferred Interexchange Carrier. A form of dialed access provided by local exchange companies whereby telephone calls dialed by the End User are automatically routed to the Company's network. End Users may also route calls to the Company's network by dialing an access code provided by the Company.

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D.)

Exchange - A group of lines in a unit generally smaller than a LATA established by the Company or other local exchange carrier for the administration of communications service in a specified area. An Exchange may consist of one or more Central Offices together with the associated facilities used in furnishing communications service within that area.

Gbps - Gigabits per second; billions of bits per second.

Host Office - An electronic switching system which provides call processing capabilities for one or more Remote Switching Modules or Remote Switching Systems.

Individual Case Basis or ICB - A process whereby the terms, conditions, rates and/or charges for a service provided under the general provisions of this tariff are developed or modified based on the unique circumstances in each case. ICB rates are determined using the rules and regulations for Special Contracts, Arrangements and Construction as contained in Section 4 of this tariff.

Interstate -The regulatory jurisdiction of services used for communications between one or more originating and terminating points located in different states within the United States or between one or more points in the United States and at least one international location.

Intrastate - For the purpose of this tariff, the term Intrastate applies to the regulatory jurisdiction of services used for communications between one or more originating and terminating points, all located within the State of Arizona.

Interexchange Carrier (IXC or IC) - A long distance telecommunications services provider that furnishes services between exchange areas.

Kbps - Kilobits per second; 1000s of bits per second.

LATA or Local Access and Transport Area - A geographic area for the provision and administration of communications services existing on February 8, 1996, as previously established by the U.S. District Court for the District of Columbia in Civil Action No. 82-0192; or established by a Bell operating company after February 8, 1996 and approved by the FCC; or any other geographic area designated as a LATA in the National Exchange Carrier Association (NECA) Tariff F.C.C. No. 4.

LEC - Local Exchange Company.

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D.)

Mbps - Megabits per second; millions of bits per second.

Message - See Call.

N/A - Not Applicable.

Non-Recurring Charge or NRC - The initial charge, usually assessed on a one-time basis, to initiate and establish a service or feature.

NPA - Numbering Plan Area or area code.

OC-12 - A high-capacity channel for full-duplex, synchronous, optic transmission of digital signals based on the SONET standard, at a rate of 622.08 Mbps.

OC-3 - A high-capacity channel for full-duplex, synchronous, optic transmission of digital signals based on the SONET standard, at a rate of 155.52 Mbps.

OC-48 - A high-capacity channel for full-duplex, synchronous, optic transmission of digital signals based on the SONET standard, at a rate of 2.4 Gbps

Off-Hook - The active condition of Switched Access service or a telephone exchange line.

On-Hook - The idle condition of Switched Access service or a telephone exchange line.

Originating Direction - The use of Switched Access Service for the origination of calls from an End User's Premises to a Customer's Point of Presence.

PIC Authorization - A Customer's or End User's selection of a PIC that meets the requirements of Federal and state law.

PIC - Primary Interexchange Carrier.

Point of Presence or POP - The physical location associated with an Interexchange Carrier's communication and switching systems.

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D.)

Point of Termination - The point of demarcation within a Customer or End User Premises at which the Company's responsibility for the provision of access service ends. The point of demarcation is the point of interconnection between Company communications facilities and Customer-provided or End User-provided facilities as defined in Part 68 of the Federal Communications Commission's Rules and Regulations.

Premises - A building, portion of a building in a multi-tenant building, or buildings on continuous property not separated by a highway. May also denote a Customer-owned enclosure or utility vault located above or below ground on private property or on Customer acquired right-of-way.

Presubscription - An arrangement whereby an End User selects and designates to the Company or other LEC, a carrier the End User wishes to access, without an access code, for completing interLATA and/or intraLATA toll calls. The selected carrier is referred to as the Primary Interexchange Carrier.

Primary Interexchange Carrier - The IXC designated by an End User as its first routing choice and primary overflow carrier for routing of 1+ direct dialed and operator assisted non-local calls.

Private Line - A service which provides dedicated path between one or more End User or Customer Premises.

Query - The inquiry to a Company data base to obtain information, processing instructions or service data.

Recurring Charge - The charges to the Customer for services, facilities or equipment, which continue for the agreed upon duration of the service. Recurring charges do not vary based on Customer usage of the services, facilities or equipment provided.

Remote Switching Modules or Remote Switching Systems (RSM/RSS) - Small remotely controlled electronic End Office Switching equipment which obtains its call processing capability from a Host Office. An RSM/RSS cannot accommodate direct trunks to an End User or Customer.

Service Commencement Date - The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards in the service order or this tariff, in which case the service commencement date is the date of the Customer's acceptance, such acceptance not to be reasonably withheld or denied. The Company and Customer may mutually agree on a substitute Service Commencement Date.

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D.)

Service Order - A written request for network services executed by the Customer and the Company.

Serving Wire Center Switch - A Company switching system where Customer or End User station loops are terminated for purposes of interconnection to other station loops, trunks or access facilities. In most contexts, the Customer or End User is connected via station loops or trunks to a Serving Wire Center Switch.

Special Access - See Dedicated Access.

Station - Refers to telephone equipment or an exchange access line from or to which calls are placed.

Switched Access - Where originating or terminating access between an End User and an Interexchange Carrier is provided via Feature Group facilities, circuits or channels provided by a local exchange carrier. A method of reaching the Customer's communication and switching systems whereby the End User is connected to the Customer's Point of Presence or designate using services of the local switched network.

Tandem Switch - See Access Tandem.

Terminal Equipment - Telecommunications devices, apparatus and associated wiring on the Customer-designated premises.

Terminating Direction - The use of Switched Access Service for the completion of calls from a Customer's Point of Presence to an End User Premises.

Trunk - A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Trunk Group - A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

V & H Coordinates - Geographic points which define the originating and terminating points of a call in mathematical terms so that the airline mileage of the call may be determined. Call mileage may be used for the purpose of rating calls.

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SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of the Company

- 2.1.1** The Company undertakes to furnish switched or dedicated access communications service pursuant to the terms of this tariff.
- 2.1.2** The Company's services and facilities are available twenty-four (24) hours per day, seven (7) days per week.
- 2.1.3** The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.
- 2.1.4** The Company arranges for installation, operation, and maintenance of the communications services provided in this tariff for Customers in accordance with the terms and conditions set forth under this tariff. The Customer shall be responsible for all charges due for such service arrangements.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.2 Use of the Company's Service**

- 2.2.1** Services provided under this tariff may be used by the Customer for any lawful telecommunications purpose for which the service is technically suited.
- 2.2.2** The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.3** Recording of telephone conversations of service provided by the Company under this tariff is prohibited except as authorized by applicable federal, state and local laws.
- 2.2.4** Any service provided under this tariff may be resold to or shared (jointly used) with other persons at the Customer's option. The Customer remains solely responsible for all use of service ordered by it or billed to its account(s) pursuant to this tariff, for determining who is authorized to use its service, and for promptly notifying the Company of any unauthorized use. The Customer may advise its customers that a portion of its service is provided by the Company, but the Customer shall not represent that the Company jointly participates with the Customer in the provision of the service. The Company may require applicants for service who intend to use the Company's offerings for resale, shared and/or joint use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and the Commission's regulations, policies, orders, and decisions.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.3 Limitations**

- 2.3.1** The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.
- 2.3.2** The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and equipment and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers, from time to time, to furnish service as required at the sole discretion of the Company.
- 2.3.3** The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- 2.3.4** The Company may block any signals being transmitted over its network by Customers which cause interference to the Company or other users. Customer shall not be relieved of any obligations to make payments for charges relating to any blocked service and shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- 2.3.5** The Company reserves the right to discontinue service when the Customer is using the service in violation of the provisions of this tariff, or in violation of the law.
- 2.3.6** The Company reserves the right to discontinue service, limit service, or to impose requirements as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material effect on the business or economic feasibility of providing service, as determined by the Company in its reasonable judgment.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.4 Assignment and Transfer**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties to a) any entity directly or indirectly controlling, controlled by or under common control with the Company, whether direct or indirect; b) under any sale or transfer of all or substantially all the assets of the Company within the state; or c) under any financing, merger or reorganization of the Company.

2.5 Application or Service

Customers may be required to enter into written or oral service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.

2.6 Ownership of Facilities

2.6.1 The Customer obtains no property right or interest in the use of any specific type of facility, service, equipment, number, process, or code.

2.6.2 Title to all facilities utilized by the Company to provide service under the provisions of this tariff shall remain with the Company, its partners, agents, contractors or suppliers. Such facilities shall be returned to the Company, its partners, agents, contractors or suppliers by the Customer, whenever requested, within a reasonable period following the request in original condition, reasonable wear and tear excepted.

ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.7 Liability of the Company**

- 2.7.1** The liability of the Company for damages of any nature arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants, or employees, in the course of establishing, furnishing, rearranging, moving, terminating, changing or removing the service or facilities or equipment shall not exceed an amount equal to the charges applicable under this tariff (calculated on a proportionate basis where appropriate, at the sole discretion of the Company) to the period during which such error, mistake, omission, interruption or delay occurs.
- 2.7.2** In no event shall the Company be liable for any incidental, indirect, special, or consequential damages (including, without limitation, lost revenue or profits) of any kind whatsoever regardless of the cause or foreseeability thereof.
- 2.7.3** When the services or facilities of other common carriers are used separately or in conjunction with the Company's facilities or equipment in establishing connection to points not reached by the Company's facilities or equipment, the Company shall not be liable for any act or omission of such other common carriers or their agents, servants or employees.
- 2.7.4** The Company shall not be liable for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, or preemption of existing service to restore service in compliance with FCC, or other relevant Commission, rules and regulations.
- 2.7.5** The Company shall not be liable for interruptions, delays, errors, or defects in transmission, or for any injury whatsoever, caused by the Customer, or the Customer's agents, End Users, or by facilities or equipment provided by the Customer.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.7 Liability of the Company, (Cont'd.)

- 2.7.6** No liability shall attach to the Company by reason of any defacement or damage to the Customer's premise resulting from the existence of the Company's equipment or facilities on such premise, or by the installation or removal thereof, when such defacement or damage is not the result of the gross negligence or intentional misconduct of the Company or its employees.
- 2.7.7** The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.
- 2.7.8** The Company makes no warranties or representations, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those warranties and representations expressly set forth herein.
- 2.7.9** Failure by the Company to assert its rights under a provision of this tariff does not preclude the Company from asserting its rights in the future with respect to that provision or from asserting its rights under other provisions.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.8 Liability of the Customer**

- 2.8.1** The Customer will be liable for damages to the facilities of the Company and for all direct, indirect, incidental and consequential damages caused by the acts or omissions of the Customer, its officers, employees, agents, invites, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- 2.8.2** To the extent caused by the acts or omissions of the Customer as described in Section 2.8.1, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred to any third party pursuant to this or any other tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided to such third party.
- 2.8.3** A Customer shall not assert any claim against any other Customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or user and not by any act or omission of the Company. Nothing in this tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.
- 2.8.4** The Customer shall be fully liable for any damages, including, without limitation, usage charges, that the Customer may incur as a result of the unauthorized use of services provided to the Customer. Unauthorized use occurs when a person or entity that does not have actual, apparent, or implied authority to use the network, obtains the Company's services provided under this tariff. The unauthorized use of the Company's services includes, but is not limited to, the placement of calls from the Customer's premise, and the placement of calls through equipment controlled and/or provided by the Customer, that are transmitted over the Company's network without the authorization of the Customer. The Customer shall be fully liable for all such charges.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.9 Obligations of the Customer**

2.9.1 The Customer is responsible for making proper application for service; placing any necessary orders; for complying with tariff regulations; and payment of charges for services provided. Specific Customer responsibilities include, but are not limited to, the following:

- A.** reimbursing the Company for damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the non-compliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer premise, unless caused by the gross negligence or intentional misconduct of the employees or agents of the Company;
- B.** providing at no charge, as specified from time to time by the Company, any needed equipment, secured space, power, supporting structures, and conduit to operate Company facilities and equipment installed on the Premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- C.** obtaining, maintaining and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide communications services to the Customer from the cable building entrance or property line to the location of the equipment space described in Section 2.9.1.B. Any and all costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to the Customer; the Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service;
- D.** providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment; the Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company; the Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g., friable asbestos) prior to any construction or installation work;

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- E.** complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible under Section 2.9.1.C.; and granting or obtaining permission for Company agents or employees to enter the Premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- F.** not creating or allowing to be placed any liens or other encumbrances on the Company's equipment or facilities;
- G.** making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer, such agreement not to be reasonably withheld or denied. No allowance will be made for the period during which service is interrupted for such purposes;
- H.** taking all steps necessary to cancel or otherwise discontinue any service(s) to be replaced by any of the Company's service(s) as described herein; and
- I.** ensuring that any Customer-provided equipment and/or systems are properly interfaced with Company facilities or services, that the signals emitted into Company's network are of the proper mode, bandwidth, power, and signal level for the intended use of the Customer and in compliance with the criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel, or degrade service to other Customers.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.9 Obligations of the Customer, (Cont'd.)

2.9.2 With regard to access services provided by the Company, specific Customer responsibilities include, but are not limited to, the following:

A. Design of Customer Services

The Customer shall be responsible for its own expense for the overall design of its services and for any redesigning or rearrangements of its services which may be required because of changes in facilities, operations or procedures of the Company, minimum protection criteria, or operating or maintenance characteristics of the facilities.

B. Network Contingency Coordination

The Customer shall, in cooperation with the Company, coordinate the planning of actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications service.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.9 Obligations of the Customer, (Cont'd.)****2.9.2 (Cont'd.)****C. Jurisdictional Reports**

Jurisdictional reporting requirements will be as specified below. When a Customer orders access service, its projected Percent Interstate Usage (PIU) must be provided in whole numbers to the Company. The Percent State Usage (PSU) is 1-PIU. These whole number percentages will be used by the Company to apportion the use and/or charges between interstate and intrastate until a revised report is received as set forth herein. Reported or default PIU factors are used only where the call detail is insufficient to determine the appropriate jurisdiction of the traffic.

1. **Originating Access** - Originating access minutes consist of traffic originating from the Company local switching center(s). The Customer must provide the Company with a projected PIU factor on an annual basis.

If no PIU for originating minutes is submitted as specified herein, a default PIU of 50% will be applied by the Company.

2. **Terminating Access** - Terminating access minutes consist of traffic terminating to the Company local switching center(s). The Customer must provide the Company with a projected PIU factor on an annual basis.

If no PIU for terminating minutes is submitted as specified herein, a default PIU of 50% will be applied by the Company.

3. Except where access minutes are measured by Company call detail, the Customer reported Projected PIU factor as set forth above will be used until the Customer reports a different projected PIU factor.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.9 Obligations of the Customer, (Cont'd.)****2.9.2 (Cont'd.)****C. Jurisdictional Reports, (Cont'd.)**

4. The Company will charge the intrastate terminating switched access rates to Customers for those minutes lacking jurisdictional information that are in excess of a reasonable percentage (10%) of minutes for which this information is not transmitted. For example, if 40% of a Customer's minutes sent to the Company do not contain sufficient originating information to allow the Company to determine the originating location, the Company would apply these provisions to those minutes exceeding the 10% "floor," or 30% in this example. The Company will apply the customer's provided PIU to the residual traffic that does not apply to the provision of this tariff section (70% in this example).

In the event that the Company applies the intrastate terminating access rates to calls without sufficient jurisdictional information as specified herein, the customer can request that the Company change the application of the intrastate access rates upon an acceptable showing, as determined by the Company, of why the intrastate rate should not be applied.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.9 Obligations of the Customer, (Cont'd.)****2.9.2 (Cont'd.)****D. Jurisdictional Audits**

1. The Customer shall keep sufficient detail from which the percentages of interstate and intrastate use reported to the Company can be verified, and upon request of the Company, shall make such records available for inspection and audit. The Customer must maintain these records for 24 months from the date the report became effective for billing purposes.
2. Initiation of an audit will be at the sole discretion of the Company. The audit shall be performed by an independent party selected by the Company. An audit may be initiated by the Company for a single Customer no more than once per year. The Customer shall supply the required data within 30 calendar days of the Company request.
3. In the event that an audit reveals that any customer reported PIU was incorrect, the Company shall apply the audit result to all usage affected by the audit. The customer shall be backbilled or credited, for a period retroactive to the date that the incorrect percentage was reported, but not to exceed 24 months. Backbilled amounts are subject to a late payment penalty and payment shall be made in immediately available funds, within 31 days from receipt of bill or by the following bill date, whichever is a shorter period.
4. Should an audit reveal that the misreported percentage(s) of use resulted in an underpayment of access charges to the Company of five percent or more of the total Switched Access Services bill, the Customer shall reimburse the Company for the cost of the audit. Proof of cost shall be the bills, in reasonable detail submitted to the Company by the auditor.
5. Within 15 days of completion of the auditor's report, the Company will furnish a copy of the audit results to the person designated by the Customer to receive such results.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.10 Billing and Payment For Service****2.10.1 Responsibility for Charges**

The Customer is responsible for payment of all charges for services and equipment furnished to the Customer for transmission of calls via the Company. In particular and without limitation, the Customer is responsible for any and all cost(s) incurred as the result of:

- A. any delegation of authority resulting in the use of Customer's communications equipment and/or network services which result in the placement of calls via the Company;
- B. any and all use of the service arrangement provided by the Company, including calls which the Customer did not individually authorize; and
- C. any calls placed by or through the Customer's equipment via any remote access feature(s).

2.10.2 Minimum Period

The minimum period for which services are provided and for which rates and charges are applicable is one (1) month unless otherwise specified in this tariff or by mutually agreed upon contract. When a service is discontinued prior to the expiration of the minimum period, charges are applicable, whether the service will be used or not.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.10 Billing and Payment For Service, (Cont'd.)****2.10.3 Payment for Service**

- A.** All charges due by the Customer are payable to the Company or any agent duly authorized to receive such payments. Terms of payment shall be according to the rules and regulations of the Company or its agent and subject to the rules of regulatory bodies having jurisdiction.
- B.** Non-recurring charges for installations, service connections, moves or rearrangements are due and payable upon receipt of the Company's invoice by the Customer. At the Company's discretion, payment of all or a portion of any non-recurring charges may be required prior to commencement of facility or equipment installation or construction required to provide the services requested by the Customer.
- C.** The Company shall present invoices for recurring charges monthly to the Customer, in advance of the month in which service is provided, and recurring charges shall be due and payable as specified on the bill. The Company reserves the right to utilize as its sole and exclusive billing method electronic invoices that are accessible by the Customer via a secure web interface.
- D.** When billing is based upon Customer usage, usage charges will be billed monthly in arrears for service provided in the preceding billing period. Any requests by the Customer for call detail records supporting billed usage charges must be submitted to the Company in writing or via electronic mail that is acknowledged as received by the Company, within sixty (60) days of the date of the invoice on which the usage was billed. Any such call detail records will be provided in a format to be mutually agreed between the Company and the Customer.
- E.** Customer billing will begin on the Service Commencement Date. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- F.** When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro-rata basis. For this purpose, every month is considered to have 30 days.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.10 Billing and Payment For Service, (Cont'd.)

2.10.3 Payment for Service, (Cont'd.)

- G.** Amounts not paid within 30 days after the mailing date of invoice will be considered past due.
- H.** In the event Company, in its sole discretion, chooses to forego billing the Customer for access services in any particular month(s), Company reserves the right to back bill Customer for any unbilled recurring or nonrecurring charges for a period of twenty-four (24) months.

2.10.4 Disputed Charges

- A.** Any objections to billed charges must be reported to the Company or its billing agent in writing or via electronic mail that is acknowledged by the Company within sixty (60) days of the invoice date of the bill issued to the Customer. Adjustments to Customers' bills shall be made to the extent that circumstances exist which reasonably indicate that such changes are appropriate.
- B.** In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within sixty (60) days of the invoice date of the bill for the disputed services. If the Customer does not submit a claim as stated above, the Customer waives all rights to filing a claim thereafter.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.10 Billing and Payment For Service, (Cont'd.)

2.10.4 Disputed Charges, (Cont'd.)

- C.** If the dispute is resolved in favor of the Customer, and the Customer has withheld the disputed amount, no interest credits or penalties will apply.
- D.** If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, any payments withheld pending settlement of the disputed amount shall be subject to the late payment penalty as set forth in 2.10.5.
- E.** If the dispute is resolved in favor of the Customer and the Customer has paid the disputed amount, the Customer will receive an interest credit from the Company for the disputed amount times a late factor as set forth in 2.10.5.
- F.** If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date, no interest credit or penalties will apply.
- G.** Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

Clear Rate Telecom, L.L.C.
24700 Northwestern Hwy, Suite 340
Southfield, MI 48075
(877) 877-4799

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.10 Billing and Payment For Service, (Cont'd.)****2.10.5 Late Payment Fees**

A late payment charge of 1.5% per month, or the highest rate permitted by applicable law, whichever is less, shall be due to the Company for any billed amount for which payment has not been received by the Company within thirty (30) days of the invoice date of the Company's invoice for service, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment. If the last calendar day for remittance falls on a Sunday, legal holiday or other day when the offices of the Company are closed, the date for acceptance of payments prior to assessment of any late payment fees shall be extended through to the next business day.

2.10.6 Returned Check Charge

A service charge equal to \$25.00, or the actual fee incurred by Company from a bank or financial institution, whichever is greater, will be assessed for all checks returned by a bank or other financial institution for: insufficient or uncollected funds, closed account, apparent tampering, missing signature or endorsement, or any other insufficiency or discrepancy necessitating return of the instrument at the discretion of the drawee bank or other financial institution.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.11 Taxes, Surcharges and Fees**

- 2.11.1** All state and local taxes (i.e., gross receipts tax, sales tax, municipal utilities tax) are listed as separate line items on the Customer's bill and are not included in the quoted rates and charges set forth in this tariff. To the extent that a municipality, other political subdivision or local agency of government, or Commission imposes upon and collects from the Company a gross receipts tax, sales tax, occupation tax, license tax, permit fee, rights-of-way fee, franchise fee, or other regulatory fee or tax, such fees and taxes shall, insofar as practicable and allowed by law, be billed pro-rata to Customers receiving service from the Company within the territorial limits of such municipality, other political subdivision or local agency of government. It shall be the responsibility of the Customer to pay any such taxes and fees that subsequently become applicable retroactively.
- 2.11.2** The Company may adjust its rates and charges or impose additional rates and charges on its Customers in order to recover amounts it is required by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.12 Deposits and Advanced Payments****2.12.1 General**

The Company reserves the right to validate the creditworthiness of Customers and billed parties through available verification procedures. If a Customer's creditworthiness is unacceptable to the Company, Company may refuse to provide service, require a deposit or advance payment, or otherwise restrict or interrupt service to a Customer.

2.12.2 Deposits

- A.** To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges under Commission rules. A deposit may be required if the Customer's financial condition is not acceptable to the Company or is not a matter of general knowledge. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. A deposit may be required in addition to an advance payment.
- B.** The maximum amount of any deposit shall not exceed the equivalent of the customers estimated liability for two months service.
- C.** The Company will pay interest on deposits, to accrue from the date the deposit is made until it has been refunded, or until a reasonable effort has been made to effect refund. The Company will pay interest at the rate prescribed by the Commission or as otherwise permitted by applicable law.
- D.** If the amount of a deposit is proven to be less than required to meet the requirements specified above, the Customer shall be required to pay an additional deposit upon request.
- E.** Upon discontinuance of service, the Company shall promptly and automatically refund the Customer's deposit plus accrued interest, or the balance, if any, in excess of the unpaid bills including any penalties assessed for service furnished by the Company.

ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.12 Deposits and Advanced Payments, (Cont'd.)****2.12.3 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to two (2) months' estimated billing. This will be applied against the next month's charges and a new advance payment may be collected for the next month, if necessary. Advance payments do not accrue interest. An advance payment may be required in addition to a deposit.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.13 Cancellation by Customer****2.13.1 General**

- A. Customers of the Company's service may cancel service by providing the Company with written notification thirty (30) days prior to the requested cancellation date. The Company shall hold the Customer responsible for payment of all bills for service furnished until the cancellation date specified by the Customer or until thirty (30) days after the date that the cancellation notice is received, whichever is later.
- B. Customers seeking to cancel service have an affirmative obligation to block traffic originating from or terminating to the Company's network. By originating traffic from or terminating traffic to the Company's network, the Customer will have constructively ordered the Company's switched access service.

2.13.2 Cancellation of Contract Services

- A. If a Customer cancels a service order or terminates services before the completion of the term or where the Customer breaches the terms in the service contract, the Customer may be requested by the Company to pay to Company termination liability charges. These charges shall become due and owing as of the effective date of the cancellation or termination. Unless otherwise specified in this tariff, the termination liability shall be equal to:
 - 1. all unpaid nonrecurring charges reasonably expended by the Company to establish service to Customer; plus
 - 2. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of Customer; plus
 - 3. all recurring charges specified in the applicable service order for the balance of the then current term.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.13 Cancellation by Customer, (Cont'd.)

2.13.3 Cancellation of Application for Service

- A. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B. Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun.
- C. Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, may apply. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- D. The charges described above will be calculated and applied on a case-by-case basis.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.14 Cancellation by Company**

2.14.1 Service continues to be provided until canceled by the Customer pursuant to Section 2.13 or until discontinued by the Company. The Company may render bills subsequent to the termination of service for charges incurred before termination. The Customer shall pay such bills in full in accordance with the payment terms of this tariff.

2.14.2 The Company may refuse or discontinue service to a Customer without notice under the following conditions:

- A.** Except as provided elsewhere in this tariff, the Company may refuse, suspend or cancel service, without notice, for any violation of terms of this tariff, for any violation of any law, rule, regulation, order, decree or policy of any government authority of competent jurisdiction, or by reason of any order or decision of a court or other government authority having jurisdiction which prohibits the Company from furnishing such service or prohibits Customer from subscribing to, using, or paying for such service.
- B.** The Company may refuse, suspend or cancel service, without notice, in order to permit the Company to comply with any order or request of any governmental authority having jurisdiction.
- C.** In the event of Customer or End User use of equipment in such a manner as to adversely affect the Company's equipment or service to others.
- D.** In the event of tampering with the equipment or services of the Company or its agents.
- E.** In the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the Company may, to the extent that Company opts to restore such service, require the Customer to make, at Customer's own expense, all changes in facilities or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenues resulting from such fraudulent use.
- F.** If any of the facilities, appliances, or apparatus on Customer's premise are found to be unsafe or causing harm to the Company's facilities. Company may in the alternative refuse to furnish service until the applicant or Customer shall have remedied the condition.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.14 Cancellation by Company, (Cont'd.)**

2.14.3 Company may refuse or discontinue service provided that, unless otherwise stated, the Customer shall be given five (5) days written notice to comply with any rule or remedy any deficiency:

- A.** The Company, by written notice to the Customer and in accordance with applicable law, may refuse, suspend or cancel service without incurring any liability when there is an unpaid balance for service that is past due.
- B.** A Customer whose check or draft is returned unpaid for any reason, after two attempts at collection, may, at the Company's discretion, be subject to refusal, suspension or cancellation of service in the same manner as provided for nonpayment of overdue charges.
- C.** For neglect or refusal to provide reasonable access to the Company or its agents for the purpose of inspection and maintenance of equipment owned by the Company or its agents.
- D.** For Customer use or Customer's permitting use of obscene, profane or grossly abusive language over the Company's facilities, to the extent that Customer, after five (5) days' notice, fails, neglects or refuses to cease and refrain from such practice or to prevent the same.
- E.** For use of telephone service for any property or purpose other than that described in the application.
- F.** For Customer's breach of any contract for service between the Company and the Customer.
- G.** For periods of inactivity in excess of sixty (60) days.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.15 Restoration of Service

- 2.15.1** If service has been discontinued for nonpayment or as otherwise provided herein and the Customer wishes service continued, service may be restored at the Company's sole discretion, when all past due amounts are paid or the event giving rise to the discontinuance (if other than nonpayment) is corrected. Customers whose service was disconnected for non-payment may be required to pay a deposit and/or advance payment prior to service restoration.
- 2.15.2** A restoration fee of \$25.00, or the actual costs incurred by the Company plus an administrative charge, whichever is greater, applies to Customers whose service is restored following disconnection by the Company.
- 2.15.3** Restoration of disrupted services shall be in accordance with applicable Commission and/or Federal Communications Commission Rules and Regulations specified in Part 64, Subpart D, which specify the priority system for such activities.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.16 Provision of Company Equipment and Facilities**

- 2.16.1** The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not nor may the Customer permit others to rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- 2.16.2** The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided to the Customer.
- 2.16.3** Equipment that the Company provides or installs at the Customer premise shall not be used for any purpose other than that for which the equipment is provided.
- 2.16.4** The Company shall not be responsible for the installation, operation, or maintenance of any Customer-provided equipment. If such equipment is connected to the facilities furnished under this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered by Company under this tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:
- A.** the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission; or
 - B.** the reception of signals by Customer-provided equipment; or
 - C.** network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.17 Interconnection**

- 2.17.1** Service furnished by the Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to technical limitations established by the Company. Service furnished by the Company is not part of a joint undertaking with such other common carriers or systems. Any special interface equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.
- 2.17.2** Connection with the facilities or services of other carriers shall be under the applicable terms and conditions of the other carriers' tariffs. The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment or systems with Company's facilities. Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection.
- 2.17.3** The Customer shall ensure that the facilities or equipment provided by another carrier are properly interconnected with the facilities or equipment of the Company. If the Customer maintains or operates the interconnected facilities or equipment in a manner which results or may result in harm to the Company's facilities, equipment, personnel, or the quality of service, the Company may, upon five (5) days written notice, require the use of protective equipment at the Customer's expense. If this written notice fails to eliminate the actual or potential harm, the Company may, upon additional five (5) days written notice, terminate the existing service of the Customer.
- 2.17.4** If harm to the Company's network, personnel or services is imminent due to interconnection with another carrier's services, the Company reserves the right to shut down Customer's service immediately, with no prior notice required.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.18 Customer-Provided Equipment**

- 2.18.1** The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this tariff. The Customer may transmit any form of signal that is compatible with the Company's equipment, but the Company does not represent that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this tariff.
- 2.18.2** Terminal equipment on the Customer's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the Customer. The Customer is responsible for the provision of wiring or cable to connect its terminal equipment to the Company's network.
- 2.18.3** The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense, subject to prior Customer approval of the equipment expense.
- 2.18.4** Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements under this Section 2.18 for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- 2.18.5** If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company may, upon five (5) days written notice, require the use of additional protective equipment at the Customer's expense. If this written notice fails to remedy any protective deficiencies or potential harm, the Company may, upon additional five (5) days written notice, terminate the existing service of the Customer.
- 2.18.6** If harm to the Company's network, personnel or services is imminent, the Company reserves the right to shut down Customer's service immediately, with no prior notice required.

ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.19 Inspection, Testing and Adjustments**

- 2.19.1** The Company may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether the terms and conditions of this tariff are being complied with in the installation, operation or maintenance of the Customer's or the Company's facilities or equipment. The Company may interrupt service at any time, without penalty or liability, due to the departure from or reasonable suspicion of the departure from any of these terms and conditions.
- 2.19.2** Upon reasonable notice, the facilities or equipment provided by the Company shall be made available to the Company for such tests and adjustments as may be necessary for their maintenance in a condition satisfactory to the Company. No interruption allowance shall be granted for the time during which such tests and adjustments are made, unless such interruption exceeds twenty-four hours and is requested by the Customer.
- 2.19.3** The Company will use commercially reasonable efforts to provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period applies to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.20 Allowances for Interruptions in Service****2.20.1 General**

- A.** The provision of this Section 2.20 apply generally to the Company's Dedicated Access services only, and specifically, to any Recurring Charges applicable to Dedicated Access services.
- B.** Upon the written request of the Customer, delivered to the Company no later than thirty (30) days following the date of service interruption, a credit allowance will be given when service is interrupted, except as specified in Section 2.20.2. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this tariff.
- C.** An interruption period begins when the Customer reports to the Company a service, facility or circuit is inoperative and, if necessary, releases it for testing and repair by the Company, as determined in Company's sole reasonable discretion. An interruption period ends when the service, facility or circuit is operative.
- D.** If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, refuses access to the Customer Premises for test and repair by the Company, or continues to make voluntary use of the service, then the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired but not interrupted.
- E.** The Customer shall be responsible for the payment of service charges for visits by the Company's agents or employees to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to, the Customer.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.20 Allowances for Interruptions in Service, (Cont'd.)****2.20.2 Limitations of Allowances**

No credit allowance will be made for any interruption in service:

- A.** due to the negligence of or noncompliance with the provisions of this tariff by any person or entity other than the Company, including but not limited to the Customer;
- B.** due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C.** due to circumstances or causes beyond the reasonable control of the Company;
- D.** during any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E.** during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- F.** that occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; or
- G.** that was not reported to the Company within thirty (30) days of the date that service was affected.
- H.** Cellular and other wireless transmission is subject to interruptions including but not limited to, dropped calls, interrupted calls, unintelligible calls, one-way audio and other problems created by factors beyond Company's control. Under no circumstances will Company provide credit or payment of any kind for calls which experience problems related to cellular (wireless) transmissions.

2.20.3 Use of Another Means of Communications

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.20 Allowances for Interruptions in Service, (Cont'd.)****2.20.4 Application of Credits for Interruptions in Service**

- A. Except as provided in Section 2.20.2.A., if a Customer's service is interrupted, and it remains interrupted for eight normal working hours or longer after access to the Customer Premises is made available and after being reported to be out of order, appropriate adjustments or refunds shall be made to the Customer, when such adjustment exceeds \$1.00.
- B. The amount of adjustment or refund shall be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported. The refund to the Customer shall be a pro-rata part of the month's flat rate charges (if any) for the period of days and that portion of the service facilities rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for the service.
- C. For purposes of credit computation every month shall be considered to have seven hundred and twenty (720) hours. For services with a monthly recurring charge, no credit shall be allowed for an interruption of continuous duration of less than eight (8) hours. The Customer shall be credited for an interruption of eight (8) or more hours at the rate of 1/720th of the monthly charge for the services affected for each day that the interruption continues. The formula used for computation of credits is as follows:

$$\text{Credit} = A/720 \times B$$

A = outage time in hours (must be 8 or more)

B = total monthly Recurring Charge for affected service.

- D. No credits will be provided for usage-sensitive services.

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ACCESS SERVICES TARIFF

SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**2.21 Notices and Communications**

- 2.21.1** The Customer shall designate on the service order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.21.2** The Company shall designate on the service order or contract an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on bills for service to which the Customer shall mail payment on that bill.
- 2.21.3** Notice of a pending disconnection of a Customer's service may contain the reason for the notice, the date of the notice, a description of any remedies the Customer may make, the time allotted for the Customer to make remedies (if any), and a toll free customer service number the Customer may call to obtain additional information.
- 2.21.4** Except as otherwise stated in this tariff, all other notices or communications required to be given under this tariff will be in writing.
- 2.21.5** Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the second business day following placement of the notice, communication or bill with the U.S. mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.21.6** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.22 Mixed Interstate and Intrastate Switched Access Services

2.22.1 When mixed interstate and intrastate switched access service is provided, all charges, including nonrecurring charges, usage charges, and optional features, will be prorated between interstate and intrastate. The percentage provided in the reports as set forth in Section 2.9.2 will serve as the basis for prorating the charges. The percentage of an access service to be charged as intrastate is applied in the following manner:

- A.** For nonrecurring chargeable rate elements, multiply PIU times the quantity of chargeable elements times the intrastate tariff rate per element.
- B.** For usage sensitive chargeable rate elements, multiply the PIU times actual use (measured or Company assumed average use) times the intrastate rate.

2.22.2 A similar calculation is then performed to determine the interstate portion of the bill.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.23 Determination of Jurisdiction of Mixed Interstate and Intrastate Dedicated Access Facilities

2.23.1 When mixed interstate and intrastate service is provided over a Dedicated Access facility, the jurisdiction will be determined as follows.

- A.** If the Customer's estimate of the interstate traffic on the service equals 10% or more of the total traffic on that service, the service will be provided according to the applicable rules and regulations of the appropriate interstate tariff.
- B.** If the Customer's estimate of the interstate traffic on the service is less than 10% of the total traffic on that service, the service will be provided according to the applicable rules and regulations of this tariff.
- C.** If the percentage of interstate traffic on the service changes to the extent that it alters the jurisdiction of the service, the Customer must notify the Company of any required change in status. The affected service will revert to the appropriate jurisdictional tariff within the next full billing cycle. Any applicable termination liability will be transferred with the jurisdictional change of the service.

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE**3.1 General**

- 3.1.1** Switched Access service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer's Premises and an End User's Premises. It provides for the use of common terminating, switching and trunking facilities, and for the use of common subscriber plant of the Company. Switched Access service provides for the ability to originate calls from an End User's Premises to a Customer's Premises and to terminate calls from a Customer's Premises to an End User's Premises in the LATA where it is provided.
- 3.1.2** If a rate as set forth in this tariff is shown to more than two decimal places, the charges will be determined using the rate shown. The resulting amount will then be rounded to the nearest penny (i.e., rounded to two decimal places).
- 3.1.3** In the absence of an ASR as described in Section 3.4, delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Switched Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's Switched Access services as described and priced herein.

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.2 Manner of Provision**

- 3.2.1** Switched Feature Group (FG) Access is furnished for originating and terminating calls by the Customer to its End User. FG Access is furnished on a per-line or per-trunk basis.
- 3.2.2** Originating traffic type represents access capacity within a LATA for carrying traffic from the End User to the Customer; and Terminating traffic type represents access capacity within a LATA for carrying traffic from the Customer to the End User. When ordering capacity for FG Access, the Customer must at a minimum specify such access capacity in terms of originating traffic type and/or terminating traffic type.
- 3.2.3** FG Access is provisioned, at minimum, at the DS-1 level and provides line-side or trunk-side access to End Office switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist).
- 3.2.4** Two types of FG Access are available:
- A.** Tandem Connect Access: This option applies when the customer has no direct facilities to the End Office. Traffic is routed to and from the End Office via the Access Tandem. Delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Tandem Connect Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein.
 - B.** Direct Connect Access: This option applies when the Company or another service provider provides dedicated facilities between the Customer's premises and the End Office. This transmission path is dedicated to the use of a single Customer. The Company requires the Customer to submit an ASR or comparable documentation for the dedicated portion of Direct Connect Access. The dedicated portion of Direct Connect Access is provided on an Individual Case Basis as Special Contracts, Arrangements and Construction pursuant to Section 4 of this tariff.

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.3 Rate Categories**

There are two rate categories which apply to Switched Access Service:

- End Office Switching (includes Common Line and Switched Transport)
- Toll-Free 8XX Data Base Access Service

3.3.1 End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. The Company's composite rate is not discountable based on the customer's use of only some of the identified switched access components. This element includes the following rate categories:

A. Common Line

The Common Line rate category establishes the charges related to the use of Company-provided end user common lines by customers and end users for intrastate access.

B. Switched Transport

The Switched Transport rate category establishes the charges related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications. The Switched Transport rate category also includes transport between an end office which serves as host for a remote switching system or module (RSS or RSM) and the RSS or RSM or its equivalent.

C. End Office Switching

The End Office Switching rate category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

3.3.2 Toll-Free 8XX Data Base Query

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.4 Access Ordering****3.4.1 General**

- A.** Customers may order Switched Access through a Constructive Order, as defined herein, or through an ASR. The format and terms of the ASR will be as specified in the Industry Access Service Order Guidelines, unless otherwise specified herein.
- B.** A Customer may order any number of services of the same type and between the same premises on a single ASR. All details for services for a particular order must be identical.
- C.** The Customer shall provide all information necessary for the Company to provide and bill for the requested service. When placing an order for access service, the Customer shall provide the following minimum information:
 - 1. Customer name and Premises address(es);
 - 2. Billing name and address (when different from Customer name and address); and
 - 3. Customer contact name(s) and telephone number(s) for the following provisioning activities: order negotiation, order confirmation, interactive design, installation and billing.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.4 Access Ordering****3.4.2 Access Service Date Intervals**

- A. Access service is provided with standard or negotiated intervals
- B. The Company will specify a firm order confirmation date and Service Commencement Date contingent on the ASR being complete as received. To the extent the access service can be made available with reasonable effort, the Company will provide the access service in accordance with the Customer's requested interval, subject to the following conditions:
 - 1. For service provided under a standard interval: The standard interval for Switched Service will be sixty (60) business days from the application date. This interval only applies to standard service offerings where there are pre-existing facilities to the Customer Premises. Access services provided under the standard interval will be installed during Company business hours.
 - 2. For service provided under a negotiated interval: The Company will offer a Service Commencement Date based on the type and quantity of access services the Customer has requested. The negotiated interval may not exceed by more than six months the standard interval Service Commencement Date, or, when there is no standard interval, the Company offered Service Commencement Date, except as otherwise agreed by the Company in writing. The Company will negotiate a Service Date interval with the Customer when:
 - (a) The Customer requests a Service Commencement Date before or beyond the applicable standard interval Service Commencement Date; or
 - (b) There is no existing facility connecting the Customer Premises with the Company; or
 - (c) The Customer requests a service that is not considered by the Company to be a standard service offering (for example, if additional engineering or special construction is required to complete the order); or
 - (d) The Company determines that access service cannot be installed within the standard interval.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.4 Access Ordering, (Cont'd.)****3.4.2 Access Service Date Intervals, (Cont'd.)**

- C. All services for which rates are applied on an Individual Case Basis are provided with a negotiated interval.

3.4.3 Access Service Request Modifications

The Customer may request a modification of its ASR prior to the Service Commencement Date. All modifications must be in writing using the industry ASR process. The Company, in its sole discretion, may accept a verbal modification from the Customer. The Company will make every effort to accommodate a requested modification when it is able to do so with the normal work-force assigned to complete such an order within normal business hours.

3.5 Special Construction or Special Service Arrangements

- 3.5.1** Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction of Company facilities or development of special service arrangements may be undertaken by the Company on a commercially reasonable-efforts basis at the request of the Customer. Such construction or arrangements will be provided pursuant to regulations contained in Section 4 of this tariff.

ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.6 Obligations of the Company**

3.6.1 With regard to access services provided by Company, specific Company responsibilities include, but are not limited to the following:

A. Network Management

The Company will administer its network to ensure provision of acceptable service levels to all users of the Company's network services. Generally, service levels are considered acceptable only when both End Users and Customers are able to establish connections with minimal delay encountered within the Company network. The Company maintains the right to apply protective controls, i.e., those actions, such as call gapping, which selectively cancel the completion of traffic, to any traffic carried over its network, including that associated with a Customer's Switched Access service. Generally, such protective measures would only be taken as a result of occurrences such as a failure or overload of Company or Customer facilities, natural disasters, mass calling or national security demands.

B. Design and Traffic Routing of Switched Access Service

The Company shall design and determine the routing of Switched Access service, including the selection of the first point of switching and the selection of facilities from the interface to any switching point and to the End Offices. The Company shall also decide if capacity is to be provided by originating only, terminating only, or two-way trunk groups. Finally, the Company will decide whether trunk-side access will be provided through the use of two-wire or four-wire trunk terminating equipment.

Selection of facilities and equipment and traffic routing of the service are based on standard engineering methods, available facilities and equipment and the Company's traffic routing plans. If the Customer desires different routing or directionality than that determined by the Company, the Company will work cooperatively with the Customer in determining (1) whether the service is to be routed directly to an end office or through an Access Tandem Switch and (2) the directionality of the service.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.7 Obligations of the Customer**

3.7.1 The Customer has certain specific obligations pertaining to the use of Switched Access service. These obligations are in addition to obligations specified in Section 2.9 of this tariff and are as follows:

A. Report Requirements

Customers are responsible for providing the following reports to the Company, when applicable:

1. Jurisdictional Reports

When a Customer orders Switched Access service for both interstate and intrastate use, the Customer is responsible for providing reports as set forth in Section 2.9.2.C. Charges will be apportioned in accordance with those reports.

2. Code Screening Reports

When a Customer orders service call routing, trunk access limitation or call gapping arrangements, the customer must report the number of trunks and/or the appropriate codes to be instituted in each End Office or Access Tandem Switch, for each of the arrangements ordered.

The Company will administer its network in such a manner that the impact of traffic surges due to peaked 900 access service traffic on other access service traffic is minimized. Network management controls may be implemented at the Company's option to ensure acceptable service levels.

B. On- and Off-Hook Supervision

The Customer's facilities shall provide the necessary on- and off-hook supervision for accurate timing of calls.

ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.8 Rate Regulations****3.8.1 General**

There are three type of rates and charges that apply to Switched Access service provided by the Company. The rates and charges are monthly recurring charges, usage charges, and nonrecurring charges.

3.8.2 Types of Charges

- A. Nonrecurring Charges - are one-time charges that apply for a specific work activity (e.g., installation or changes to an existing service). Non-recurring charges may apply for installation of service, installation of optional features and service rearrangements.
- B. Recurring Charges - are flat monthly rates that apply for each month or fraction thereof that a specific rate element is provided. For billing purposes, each month is considered to have 30 days.
- C. Usage Charges - are rates that apply only when a specific rate element is used. These are applied on a per-access minute, a per-call or per-query basis. Usage rates are accumulated over a monthly period.

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.8 Rate Regulations, (Cont'd.)****3.8.3 Measurement of Access Minutes**

- A.** When recording originating calls over FG Access with multi-frequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FG Access ends when the originating FG Access entry switch receives disconnect supervision from either the originating End User's End Office (indicating that the originating End User has disconnected), or from the Customer's facilities, whichever is recognized first by the entry switch.
- B.** For terminating calls over FG Access with multi-frequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Customer's trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FG Access ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.
- C.** When recording originating calls over FG Access with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct trunk groups and with the receipt of an exit message by the switch for tandem trunk groups. The measurement of originating FG Access usage ends when the entry switch receives or sends a release message, whichever occurs first.
- D.** For terminating calls over FG Access with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed trunk groups or on tandem routed trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FG Access call usage ends when the entry switch receives or sends a release message, whichever occurs first.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)

3.8 Rate Regulations, (Cont'd.)

3.8.3 Measurement of Access Minutes, (Cont'd.)

- E.** Mileage, where applicable, will be measured in accordance with standard industry practices.
- F.** The Company will use the Small Exchange Carrier Access Billing ("SECAB") guidelines, or the Carrier Access Billing System ("CABS") guidelines, or other system that emulates or otherwise produces a reasonable substitute for the output of SECAB or CABS, for billing all charges under this tariff. The Company will provide billing using a hardcopy format or upon request, a mechanized medium (e.g., cartridge tape, CD ROM, etc.). Bills will be accurate and contain sufficient supporting details to allow customers to account for the charges and to verify their accuracy in a reasonable and timely fashion. Requests for additional bill detail will be handled and priced on an Individual Case Basis (ICB).

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.8 Rate Regulations, (Cont'd.)****3.8.4 Moves**

A. A move of services involves a change in the physical location of one of the following:

1. The point of termination at the Customer Premises, or
2. The Customer Premises

B. The charges for the move are dependent on whether the move is to a new location within the same building or to a different building as described below:

1. Moves Within the Same Building

When the move is to a new location within the same building, the charge for the move will be an amount equal to one half of the Nonrecurring Charge for the capacity affected. There will be no change in the minimum period requirements.

2. Moves to a Different Building

Moves to a different building will be treated as a discontinuance and start of service and all associated Nonrecurring Charges will apply. New minimum period requirements will be established for the new service. The Customer will also remain responsible for satisfying all outstanding minimum period charges for the discontinued service.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)

3.8 Rate Regulations, (Cont'd.)

3.8.5 Service Rearrangements

- A.** Service rearrangements are changes to existing services which do not result in either a change in the minimum period requirements or a change in the physical location of the point of termination at the Customer's Premises or the Customer's End User's Premises. Changes which result in the establishment of new minimum period obligations or a change in the physical location of the point of termination at the Customer's Premises or the Customer's End User's Premises are treated as disconnects and starts.
- B.** The charge to the Customer for the service rearrangement is dependent on whether the change is administrative only in nature or involves an actual physical change to the service.
- C.** Administrative changes will be made without charge(s) to the Customer. Such changes require the continued provision and billing of the access service to the same entity without a change in jurisdiction.

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.9 Rates and Charges****3.9.1 Common Line Access Service****A. Carrier Common Line**

Per Originating Minute	Note 1
Per Terminating Minute	Note 1

3.9.2 Switched Transport Service**A. Tandem Switched Transport Usage Charges**

Tandem Switched Transport, per Minute	Note 1
Tandem Switched Transport, per Minute, per Mile	Note 1
Tandem Switching, per Minute	Note 1

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3.A, Local Switching. This composite rate includes the elements traditionally billed as Tandem Switched Transport.

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D.)**3.9 Rates and Charges, (Cont'd.)****3.9.3 End Office Switching****A. Local Switching – Originating and Terminating, per Access Minute of Use**

In those Areas where Qwest Corporation d/b/a CenturyLink
is the Incumbent Local Exchange Carrier:

Originating, per minute of use:

The rate for this element is as specified in Clear Rate Telecom, L.L.C.
FCC Tariff No. 1, Section I.1.3, as it now exists, and as it may be
revised, added to, or supplemented.

Terminating, per minute of use:

The rate for this element is as specified in Clear Rate Telecom, L.L.C.
FCC Tariff No. 1, Section I.1.3, as it now exists, and as it may be
revised, added to, or supplemented.

B. Transport Interconnection Charge

Per Minute

Note 1

C. Information Surcharge

Per Minute

Note 1

3.9.4 Toll-Free 8XX Data Base Access Service

Per Query:

The rate for this element is as specified in Clear Rate Telecom, L.L.C.
FCC Tariff No. 1, Section I.3, as it now exists, and as it may be revised,
added to, or supplemented.

Note 1: All access minutes are billed at a single per minute access rate found in Section 3.9.3.A,
Local Switching. This composite rate includes the elements traditionally billed as Transport
Interconnection Charge and Information Surcharge.

ACCESS SERVICES TARIFF

SECTION 4 - SPECIAL CONTRACTS, ARRANGEMENTS AND CONSTRUCTION**4.1 Special Contract Arrangements**

At the option of the Company, services may be offered on a contract basis to meet specialized pricing requirements of the Customer not contemplated by this tariff. The terms of each contract shall be mutually agreed upon by the Customer and Company and may include discounts off of rates contained herein and waiver of recurring, nonrecurring, or usage charges. The terms of the contract may be based partially or completely on the term and volume commitment, type of access arrangement, mixture of services, or other distinguishing features. Unless otherwise specified, the regulations for such arrangements are in addition to the applicable regulations and prices in other sections of the tariff. Service shall be available to all similarly situated Customers for a fixed period of time following the initial offering to the first contract Customer as specified in each individual contract.

4.2 Special Service Arrangements

4.2.1 If a Customer's requirements cannot be met by services included in this tariff, or pricing for a service is shown in this tariff as "ICB", the Company will provide, where practical, special service arrangements at charges to be determined on an Individual Case Basis. These special service arrangements will be provided if the provision of such arrangements is not detrimental to any other services furnished under the Company's tariffs.

4.2.2 Special service arrangement rates are subject to revision depending on changing costs or operating conditions.

4.2.3 If and when a special service arrangement becomes a generically tariffed offering, the tariffed rate or rates will apply from the date of tariff approval.

4.3 Non-Routine Installation Charges

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays or night hours, additional charges may apply.

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ACCESS SERVICES TARIFF

SECTION 4 - SPECIAL CONTRACTS, ARRANGEMENTS AND CONSTRUCTION, (CONT'D.)**4.4 Special Construction Charges****4.4.1 General**

- A. Special construction charges may apply for services provided to the Customer by the Company. Special construction includes but is not limited to that construction undertaken:
1. where facilities are not presently available, and there is no other requirement for the facilities so constructed;
 2. of a type other than that which the Company would normally utilize in the furnishing of its services;
 3. over a route other than that which the Company would normally utilize in the furnishing of its services;
 4. in a quantity greater than that which the Company would normally construct;
 5. on an expedited basis;
 6. on a temporary basis until permanent facilities are available;
 7. involving abnormal costs;
 8. in advance of its normal construction; or
 9. when the Company furnishes a facility or service for which a rate or charge is not specified in the Company's tariff.
- B. Where the Company furnishes a facility or service requiring special construction, charges will be based on the costs incurred by the Company and may include: (1) non-recurring charges; (2) recurring charges; (3) usage charges; (4) termination liabilities; or (5) a combinations thereof.
- C. Rates and charges for special construction shall be determined and presented to the Customer for its approval prior to the start of construction. No construction will commence until and unless the Customer accepts in writing the rates and charges as presented by the Company.

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SECTION 4 - SPECIAL CONTRACTS, ARRANGEMENTS AND CONSTRUCTION, (CONT'D.)**4.4 Special Construction Charges, (Cont'd.)****4.4.2 Basis for Cost Computation**

Costs for special construction may include one or more of the following items to the extent they are applicable:

- A.** cost of installed facilities to be provided including estimated costs for the rearrangements of existing facilities. Cost may include:
 - 1. installation of equipment and materials provided or used,
 - 2. engineering, labor and supervision during construction,
 - 3. transportation of materials, and
 - 4. rights of way required for transmission facilities;
- B.** cost of operation, maintenance, and administration of equipment and facilities;
- C.** depreciation on the estimated cost installed of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage;
- D.** general administrative expenses, including taxes on the basis of average charges for these items;
- E.** license preparation, processing and related fees;
- F.** tariff preparation, processing and other related regulatory fees;
- G.** any other item of expense associated with the particular special service arrangement; and
- H.** an amount, computed on the estimated installed cost of the facilities used to provide the special service arrangement, for return on investment and contingencies.

Issued: June 15, 2016

Effective Date: _____

Issued By: Haran C. Rashes, Legal and Regulatory Affairs

Clear Rate Telecom, L.L.C.

555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

ACCESS SERVICES TARIFF

SECTION 4 - SPECIAL CONTRACTS, ARRANGEMENTS AND CONSTRUCTION, (CONT'D.)

4.4 Special Construction Charges, (Cont'd.)

4.4.3 Termination Liability

- A. To the extent that there is no other requirement for use by the Company, a termination liability may apply for facilities or services specially constructed at the request of the Customer.
- B. The termination liability period is the estimated service life of the facilities provided.
- C. The amount of the maximum termination liability is equal to the estimated cost for installation and operation of the service during its service life. Costs include those items previously listed in Section 4.4.2.
- D. The applicable termination liability will be calculated based on the following:
 - 1. Multiplying the sum of the amounts determined as set forth in Section 4.4.3.C preceding by a factor related to the unexpired period of liability and the discount rate for return and contingencies.
 - 2. The amount determined in 4.4.3.D.1. preceding shall be adjusted to reflect the predetermined estimate of net salvage, if any, including any reuse of the facilities provided.
 - 3. The final termination liability is then adjusted to reflect applicable taxes or regulatory fees.

Issued: June 15, 2016

Issued By: Haran C. Rashes, Legal and Regulatory Affairs
Clear Rate Telecom, L.L.C.

555 S. Old Woodward, Suite 600, Birmingham, Michigan 48009

Effective Date: _____

ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment C

Clear Rate Telecom, L.L.C. will publish legal notices, as directed by the Commission, and will submit affidavits of publication following such publication.

**IN THE MATTER OF THE APPLICATION OF
CLEAR RATE TELECOM, L.L.C.
A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE LOCAL
COMPETITIVE SERVICES WITHIN THE STATE OF ARIZONA**

Clear Rate Telecom, L.L.C. ("Applicant") has filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive facilities-based local exchange telecommunications services, resold local exchange telecommunications services, and resold long distance telecommunications services, in the State of Arizona. Applicant will be required by the Commission to provide this service under the rates and charges and terms and conditions established by the Commission. The application, report of the Commission's Utilities Division Staff, and any written exceptions to the staff report prepared by the applicant are available for inspection during regular business hours at the offices of the Commission located at 1200 West Washington Street, Phoenix, Arizona 85007, and at Applicant, 555 S. Old Woodward Ave., Suite 600, Birmingham, Michigan 48009. Under appropriate circumstances, interested parties may intervene in the proceedings and participate as a party. You may have the right to intervene in the proceedings, or you may make a statement for the record. Intervention shall be in accordance with A.A.C. R14-3-105, except that all motions to intervene must be filed on or before _____, 2016. Persons desiring to intervene must file a written motion to intervene with the Commission and send such motion to the Company or its counsel and to all parties of record, and which at the minimum, shall contain the following: 1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if difference than the intervenor. 2. A short statement of the proposed intervenor's interest in the proceeding (e.g. a customer of the company, a shareholder of the company, a competitor, etc.). 3. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. A.A.C. R14-3-105 shall govern the granting of motions to intervene. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. The hearing is scheduled to commence on _____, 2016 at _____. at the Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007. Please check with the Commission for any changes to the scheduled hearing date. If you have any comments, mail them to: The Arizona Corporation Commission Attention Docket Control RE: Clear Rate Telecom, L.L.C. _____ 1200 West Washington St. Phoenix, Arizona 85007 If you have any questions about this application, or want information on intervention, you may contact the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request reasonable accommodations such as sign language interpreter, as well as request this document in an alternative format, by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602/542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment D

Financial Information

Clear Rate Telecom, L.L.C. considers its financial information confidential.

Clear Rate is willing to provide un-redacted financial statements to the Commission, under seal, following entry of a protective order in this proceeding. Clear Rate Telecom is aware that our total assets, shareholder equity, net income and net book value figures may appear in the public Staff Report, Recommended Order and final Order. However, we request that all other financial and proprietary information be kept confidential under a protective order.

CLEAR RATE TELECOM, LLC
BALANCE SHEET AS OF 4/30/16, 12/31/15 AND 12/31/14

4/30/2016

12/31/2015

12/31/2014

Cash

Accounts Receivable

Total Assets

Accrued Liabilities

Total Liabilities

Retained Earnings

Distributions

Current Year (Profit) Loss

Total Equity

Total Liabilities and Equity

CLEAR RATE TELECOM, LLC

PROFIT AND LOSS

FOR THE FOUR MONTHS ENDED 4/30/16, THE TWELVE MONTHS ENDED 12/31/15 AND
12/31/14 RESPECTIVELY

	<u>Jan - Apr 16</u>	<u>Jan - Dec 15</u>	<u>Jan - Dec 14</u>
Ordinary Income/Expense			
Income			
40000 · Billings - Local Service			
43000 · Billings - Surcharges			
44000 · Billings - Carrier Accs Billing			
45000 · Billings - Internet Services			
Total Income			
Cost of Goods Sold			
50000 · Cost of Sales - Local Services			
52000 · Long Distance Services			
53000 · International Long Distance			
54000 · Internet Services			
55000 · Repairs & Equipment			
Total COGS			
Gross Profit			
Expense			
60100 · Commissions			
61300 · Miscellaneous			
61650 · Regulatory Fees			
62200 · Taxes			
69000 · Overhead Allocation			
Total Expense			
Net Ordinary Income			
Net Income			

ARIZONA CORPORATION COMMISSION

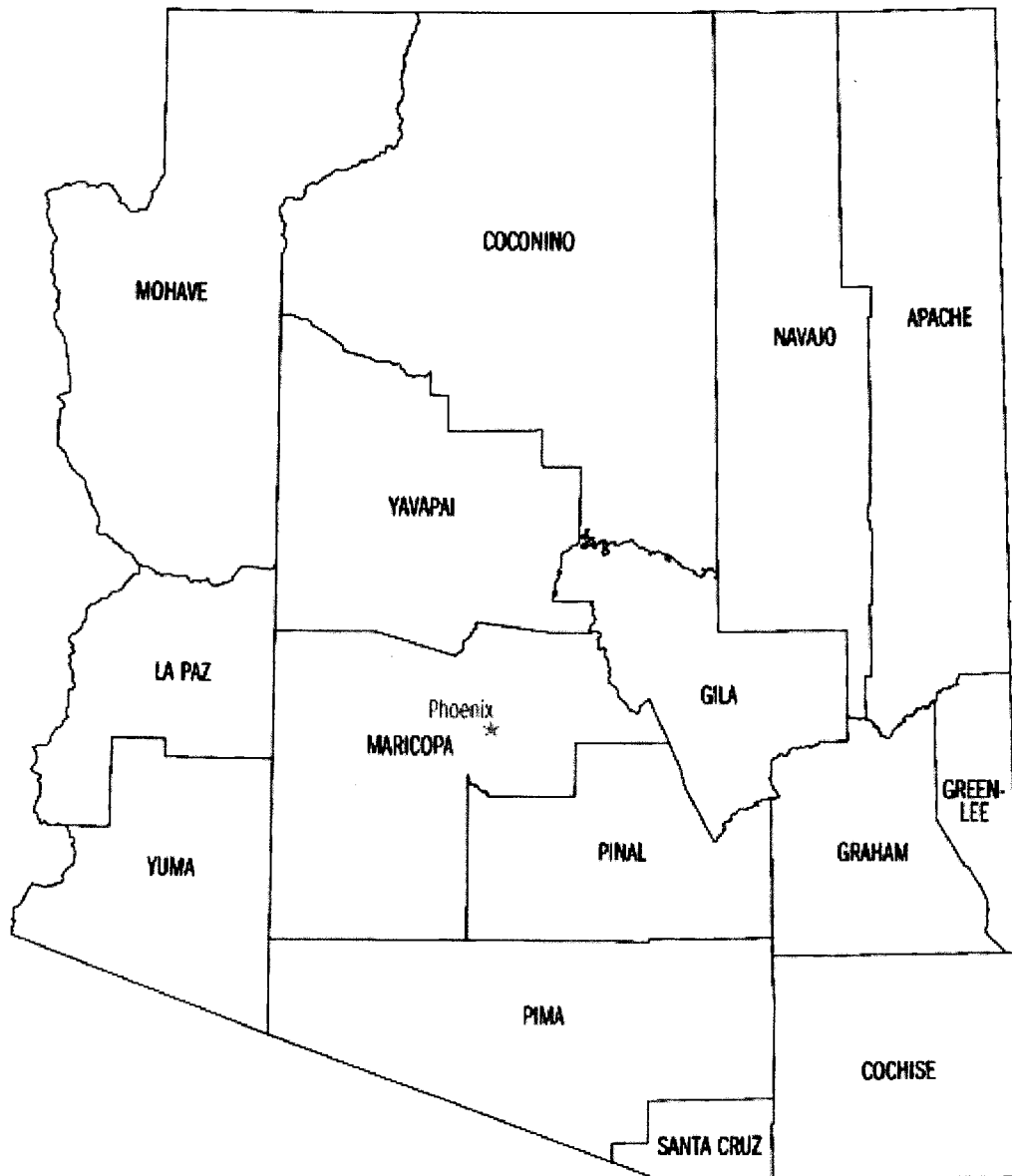
Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment E

Statewide Map

Arizona



ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment F

Past Legal Proceedings for Parent Company



Clear Rate Communications, Inc., the parent company of Clear Rate Telecom, L.L.C., has been involved in the following legal and administrative proceedings in the last ten (10) years:

FEDERAL COMMUNICATIONS COMMISSION

DA 07-2508	IC No. 07-S0272292	Released: June 14, 2007
DA 07-2641	IC No. 07-S0275351	Released: June 18, 2007
DA 07-2903	IC No. 07-S0277110	Released: July 3, 2007
DA 07-3216	IC No. 07-S0271221	Released: July 17, 2007
DA 07-3430	IC No. 07-S0278458	Released: July 30, 2007
DA 07-3434	IC No. 07-S0278457	Released: July 30, 2007
DA 07-3655	IC No. 07-S0277734	Released: August 20, 2007
DA 07-3778	IC No. 07-S0280149	Released: August 29, 2007
DA 07-4446	IC Nos. 07-S0277287	Released: October 31, 2007
	07-S0277533	
	07-S0279433	
	07-S0279546	
DA 07-4771	IC No. 07-S0284611	Released: November 30, 2007
DA 07-4810	IC No. 07-S0279420	Released: November 30, 2007
DA 07-4820	IC No. 07-S001854	Released: November 30, 2007
DA 08-209	IC No. 07-S0277774	Released: January 30, 2008
DA 08-2763	IC No. 08-S0293861	Released: December 23, 2008

In the above-listed complaints, the FCC found that Clear Rate Communications, Inc.'s was authorized to change a subscriber's service and denied the complaints.

DA 07-4441	IC No. 07-S0279437	Released October 31, 2007
DA 07-4443	IC No. 07-S0279423	Released: October 31, 2007
DA 08-2075	IC No. 08-S0293838	Released: September 11, 2008
DA 08-2397	IC No. 08-S0293963	Released: October 30, 2008
DA 09-1661	IC No. 09-S0295544	Released: July 31, 2009
DA 09-1909	IC No. 09-S0296166	Released: August 31, 2009
DA 09-1921	IC No. 09-S0296005	Released: August 31, 2009
DA 09-1953	IC No. 08-S002270	Released: August 31, 2009
DA 09-2333	IC No. 09-S0296679	Released: October 30, 2009
DA 10-189	IC No. 09-S002479	Released: January 29, 2010
DA 10-744	IC No. 09-S0297288	Released: April 30, 2010
DA 10-1221	IC No. 10-S0297601	Released: June 30, 2010
DA 10-1404	IC No. 10-S0297627	Released: July 30, 2010
DA 10-1430	IC No. 10-S0297486	Released: July 30, 2010
DA 10-2397	IC Nos. 10-S0298037 10-S2689715	Released: December 23, 2010
DA 11-760	IC No. 11-S2960984	Released: April 29, 2011
DA 11-761	IC No. 10-S2740070	Released: April 29, 2011
DA 11-762	IC No. 10-S2787000	Released: April 29, 2011
DA 12-1077	IC No. 11-S003106	Released: July 6, 2012

In the above-listed complaints, the FCC found that Clear Rate Communications, Inc.'s Third-Party-Verification was inadequate or did not comply with the exact wording preferred by the FCC pursuant to 47 C.F.R. § 64.1120 and ordered a refund of all charges to the subscriber. Clear Rate Communications has since revised its policies with its Third-Party Verification Vendor and revised its authorizations scripts.

DA 13-882	IC Nos. 11-S3191626 11-S3287236 11-S3290673 12-S003420 12-S003450 12-S003454 12-S003484 12-S3319559 12-S3346367 12-S3389371 12-S3409843 12-S3435904 12-S3444979 12-S3450938 12-S3458488	Released: April 26, 2013
DA 13-892	IC No. 10-S2887729	Released April 26, 2013
DA 13-1129	IC No. 10-S2865130	Released: May 17, 2013
DA 13-1719	IC Nos. 12-S003486 12-S003520 12-S003527 12-S3500079	Released: August 8, 2013
DA 13-1820	IC No. 12-S3349520	Released: August 28, 2013
DA 13-2386	IC Nos. 12-S3474064 12-S3474312 12-S3428058 13-S003652 13-S3556940 13-S3656440 13-S3660938 13-S3670661	Released: December 13, 2013
DA 14-708	IC Nos. 13-S003596 13-S003605 13-S3621641 13-S3636357 13-S3652821 13-S3662969	Released: May 23, 2014
DA 14-908	IC No. 13-S3685297	Released: June 27, 2014
DA 15-1510	IC Nos. 14-S003740 14-S3803356	Released: December 31, 2015
DA 15-1511	IC Nos. 14-S3773865 14-S3812093	Released: December 31, 2015

In the above-listed complaints, the FCC found that the language used by Clear Rate Communications, Inc. in its Third-Party-Verification did not “not establish whether the person was authorized to make the carrier change” as required by 47 C.F.R. §64.1120(c)(3)(iii). Clear Rate Communications has filed Applications for Review

of Action Taken Pursuant to Delegated Authority, which are pending before the FCC, and has modified its Third-Party Verification script in accordance with the FCC's Orders.

INDIANA

In Re: Clear Rate Communications, Inc., Marion Circuit Court Cause No. 49C01 13 05 M 016472, Order Approving Assurance of Voluntary Compliance issued May 28, 2013.

The Indiana Attorney General brought a complaint against Clear Rate Communications, Inc. alleging that Clear Rate was violating the Indiana Do Not Call List. The Parties reached a settlement of the issues based on Clear Rate's assurances that it was not violating the law and the case was dismissed.

ILLINOIS

Harold Stout v. Clear Rate Communications, Inc., ICC Docket No. 07-0406, Order issued Nov. 29, 2007.

On July 6, 2007, Harold Stout filed a complaint against Clear Rate Communications, Inc. alleging that his telephone service had been switched without authorization. On November 29, 2007, the Illinois Commerce Commission dismissed the complaint.

MICHIGAN

In the matter, on the Commission's own motion, directing Clear Rate Communications, Inc., to show cause why it should not be found to be in violation of Section 315 of the Michigan Telecommunications Act, 1991 PA 179, as amended, and Case No. U-17655, M.P.S.C. Case No. U-17951, Order issued Nov. 19, 2015.

The Michigan Public Service Commission Staff accused Clear Rate of not complying with telecommunications relay service guidelines. On settlement, the Commission found that "Clear Rate Communications, Inc. is currently in compliance with MCL 484.2315 and Case No. U-17655."

In the matter of the Complaint of Deborah Kaminski against Clear Rate Communications, Inc., M.P.S.C. Case No. U-16555, Order issued April 12, 2011.

On February 15, 2011, Deborah Kaminski filed a complaint against Clear Rate Communications, Inc., alleging a billing dispute. On March 28, 2011, the complainant filed a request to withdraw the complaint.

Sprint Communications Co. L.P. v Michigan Bell Tel Co., et al, U.S. District Court for the E.D. of Michigan, Docket No. 2:14-cv-12087; and, *MCI Communications Serv., Inc., et al., v BRE Communications, Inc., et al.*, U.S. District Court for the E.D. of Michigan, Docket No. 2:14-cv-13464, consolidated in, *In Re: IntraMTA Switched Access Charges Litigation*, U.S. District Court for the N.D. of Texas, Docket No. 3:14-MD-2587 (MDL No. 2587).

Sprint and MCI filed litigation alleging that over 100 local exchange carriers ("LECs"), including Clear Rate Communications, Inc., have charged and are continuing to charge interexchange carrier access fees on intraMTA wireless calls, in violation of FCC and court decisions that prohibit this practice for wireless intraMTA calls between Commercial Mobile Radio Service ("CMRS") carriers and LECs that originate and terminate within the same MTA. In a ruling on November 17, 2015, U.S. District Court Judge Sidney Fitzwater

dismissed the Plaintiff's claims. However, the plaintiffs were granted leave to replead their state-law claims. The case remains pending.

WEST VIRGINIA

Frontier West Virginia, et al. v. Clear Rate Communications, Inc., W.Va. P.S.C. Case No. 13-C-13-0447-T-C, Order Issued November 18, 2013.

Frontier West Virginia brought a complaint alleging that Clear Rate Communications was misrepresenting itself to West Virginia consumers and businesses as Frontier or as an affiliate of Frontier. Clear Rate brought a counter-claim against Frontier alleging that Frontier was attempting to denigrate Clear Rate's name, intimidate Clear Rate and interfere with competition, and utilizing the local Pre-subscribed Interexchange Carrier ("PIC") freeze process in anti-competitive ways. The Parties reached a settlement agreement that contained a detailed procedure for dispute resolution between them and the Commission dismissed the proceeding

In Re: Clear Rate Communications, Inc. – Staff's Petition for a General Investigation into the charging of a carrier access charge, W.Va. P.S.C. Case No. 13-C-13-1818-T-GI, Order Issued October 31, 2014.

West Virginia Public Service Commission Staff brought a complaint regarding Clear Rate Communications' Carrier Access Charge. The Commission ultimately found that "Clear Rate has not violated W.Va. Code §24-2-7 by either the placement of the CAC on the bill or the lack of specific mention of the CAC in the Clear Rate script."

West Virginia v. Clear Rate Communications, Inc., Kanawha County Circuit Court Case No. 13-c-2357, Dismissed February 24, 2015.

The West Virginia Attorney General brought a complaint regarding Clear Rate Communications' Carrier Access Charge and alleging that Clear Rate was misrepresenting itself as the incumbent in acquiring customers. The Parties reached a settlement of the issues based on Clear Rate's assurances that it was not violating the law and the case was dismissed.



The above listed Orders are attached hereto.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications)
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)
)

IC No. 07-S0272292

ORDER

Adopted: June 8, 2007

Released: June 14, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0272292, filed April 2, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10907 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 836 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on April 2, 2007, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on May 9, 2007.¹² Clear Rate states that authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0272292, received May 9, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 07-S0275351
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: June 14, 2007

Released: June 18, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0275351, filed May 1, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003), Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on May 1, 2007, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on May 11, 2007.¹² Clear Rate states that authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0275351, received May 11, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Clear Rate Communications	)	IC No. 07-S0277110
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: June 29, 2007

Released: July 3, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0277110, filed May 17, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1508 (1999) (*Section 258 Order*), stayed in part, *McT WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999), First Order on Reconsideration, 15 FCC Red 8158 (2000); *stay lifted*, *McT WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 15996 (2000), *Errata*, DA No. 00-2163 (rel. Sept. 25, 2000), *Erratum*, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003), Order, 18 FCC Red 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Red 9560 (1995), stayed in part, 11 FCC Red 856 (1995), *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8 FCC Red 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming.

broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on May 17, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on June 19, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 07-S0271221
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: July 12, 2007

Released: July 17, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0271221, filed March 26, 2007.

² See 47 C.F.R. §§ 64.1100—64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992); *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

¹² Clear Rate's Response to Informal Complaint No. 07-S0277110, received June 19, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on March 26, 2007, alleging that Complainant's telecommunications service provider had been charged Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on May 22, 2007.¹² Clear Rate states that authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0271221, received May 22, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Clear Rate Communications) IC No. 07-S0278458
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: July 26, 2007

Released: July 30, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0278458, filed June 12, 2007.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *McI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *McI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on June 12, 2007, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on June 28, 2007.¹² Clear Rate states that authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0278458, received June 28, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of

Clear Rate Communications

IC No. 07-S0278457

Complaint Regarding
Unauthorized Change of
Subscriber's Telecommunications Carrier

ORDER

Adopted: July 26, 2007

Released: July 30, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0278457, filed June 12, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), *arg. filed*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000). Errata, DA No. 00-2163 (rel. Sept. 25, 2000). Erratum, DA No. 00-2192 (rel. Oct. 4, 2000). Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003). Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995) (*Section 258 Order*), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Diverse Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

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4. We received Complainant's complaint on June 12, 2007, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on June 28, 2007.¹² Clear Rate states that authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0278457, received June 28, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Clear Rate Communications	)	IC No. 07-S0277734
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: August 16, 2007

Released: August 20, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the

¹ Informal Complaint No. IC 07-S0277734, filed May 30, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Red 8158 (2000), stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 15996 (2000), Errata, DA No. 00-2163 (tel. Sept. 25, 2000), Erratum, DA No. 00-2192 (tel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003); Order, 18 FCC Red 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Red 9560 (1995), stayed in part, 11 FCC Red 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8 FCC Red 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on May 30, 2007, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on June 29, 2007.¹² CRC states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with CRC's response and we find that CRC has produced clear and convincing evidence of

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(e). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRC Response to Informal Complaint No. 07-S0277734, received June 29, 2007.

a valid authorized carrier change by Complainant.¹³ Therefore, we find that CRC's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against CRC IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 07-S0280149
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: August 28, 2007

Released: August 29, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0280149, filed July 16, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata DA No. 00-2163 (rel. Sept. 25, 2000); Erratum DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 16, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(e). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on August 14, 2007.¹² Clear Rate states that authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0280149, received August 14, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Clear Rate Communications) IC Nos. 07-S0277287
) 07-S0277533
Complaints Regarding)
Unauthorized Change of) 07-S0279433
Subscriber's Telecommunications Carrier) 07-S0279546

ORDER

Adopted: October 26, 2007 Released: October 31, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints' alleging that Clear Rate Communications (Clear Rate) Complainants' telecommunications service provider without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in unauthorized changes in Complainants' telecommunications service providers and we deny Complainants' complaints.

2. In December 1998, the Commission released the Section 258 Order in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the Section 258 Order,

¹ See Appendix A.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Policies and Rules Concerning Unauthorized Changes/Provisions of the Telecommunications Act of 1996*; 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed to Clear Rate without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Clear Rate of the complaints and Clear Rate responded.¹³ Clear Rate states that authorizations were received and confirmed through third party verifications (TPVs). We have reviewed the TPVs submitted

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(e). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix A.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹³ See Appendix A.

by Clear Rate with its responses and find that Clear Rate has produced clear and convincing evidence of valid authorized carrier changes by Complainants.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against Clear Rate ARE DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX A

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF RESPONSE	AUTHORIZED CARRIER
07-S0277287	May 21, 2007	June 6, 2007	Verizon
07-S0277533	May 24, 2007	June 15, 2007	Verizon
07-S0279433	July 2, 2007	August 1, 2007	Verizon
07-S0279546	July 2, 2007	July 24, 2007	Verizon

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¹⁴ If a Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Clear Rate Communications) IC No. 07-S0284611
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: November 27, 2007

Released: November 30, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 07-S0284611, filed October 1, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1598 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on October 1, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on October 19, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that authorization was given. We find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-50284611, received October 19, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Clear Rate Communications	)	IC No. 07-S0279420
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: November 29, 2007

Released: November 30, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complainant's allegations that Clear Rate Communications (Clear Rate) changed complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ Informal Complaint No. IC 07-S0279420, filed June 25, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 22, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000). Errata, DA No. 00-2163 (tel. Sept. 25, 2000). Erratum, DA No. 00-2192 (tel. Oct. 4, 2000). Order, FCC 01-67 (tel. Feb. 22, 2001). Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003). Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on June 25, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on July 24, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV submitted by Clear Rate with its response and find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-S0279420, filed July 24, 2007.

¹³ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Clear Rate Communications	)	IC No. 07-S001854
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: November 29, 2007

Released: November 30, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on October 19, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

¹ Informal Complaint No. IC 07-S001854, filed October 19, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 1997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992); *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on November 2, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and we find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.¹⁴

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 07-S0277774
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: January 29, 2008

Released: January 31, 2008

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (Clear Rate) changed complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider and we deny Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ Informal Complaint No. IC 07-S0277774, filed June 4, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1308 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

¹² Clear Rate's Response to Informal Complaint No. 07-S001854, received November 2, 2007.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming.

Commission broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130;(2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on June 4, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on June 28, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV submitted by Clear Rate with its response and find that Clear Rate has produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹² Clear Rate's Response to Informal Complaint No. 07-50277774, filed June 28, 2007.

¹³ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 08-S0293861
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: December 19, 2008 **Released: December 23, 2008**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate, Inc. (Clear Rate) changed complainant's telecommunications service provider without obtaining authorization and verification from complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did not result in an unauthorized change in complainant's telecommunications service provider and we deny complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ Informal Complaint No. IC 08-S0293861, filed July 7, 2008.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), *Entra, DA No. 00-2163* (rel. Sept. 25, 2000), *Entraum, DA No. 00-2192* (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 7, 2008, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on July 30, 2008.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV submitted by Clear Rate with its response and find that Clear Rate has

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate's Response to Informal Complaint No. 08-S0293861, filed July 30, 2008.

produced clear and convincing evidence of a valid authorized carrier change by Complainant.¹³ Therefore, we find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service.

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate IS DENIED.

6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Clear Rate Communications	)	IC No. 07-S0279437
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: October 26, 2007

Released: October 31, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ Informal Complaint No. IC 07-S0279437, filed July 2, 2007.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCJ WorkClear Rulcom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), stay lifted, *MCJ WorkClear Rulcom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995) (*Section 258 Order*), 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Discretion Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

¹³ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 2, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on August 1, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that Clear Rate's verifier failed

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate's Response to Informal Complaint No. 07-S0279437, received August 1, 2007.

to confirm a switch of intra-ATA service, in violation of our rules.¹³ We find that Clear Rate has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communication Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and AT&T, Inc. carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 07-S0279423
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: October 26, 2007

Released: October 31, 2007

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ Informal Complaint No. IC 07-S0279423, filed July 2, 2007.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, *McClendon v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), stay lifted, *McClendon v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15906 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5999 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 5215 (1993); Investigation of Access and Diverse Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.2d 911, 101 F.C.2d 935, reconsideration denied, 102 F.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 2, 2007, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on July 19, 2007.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that Clear Rate's verifier failed

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate's Response to Informal Complaint No. 07-S0279423, received July 19, 2007.

to confirm the telephone number to be switched, as required by our rules.¹³ We find that Clear Rate has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
)
Clear Rate Communications, Inc.) IC No. 08-S0293838
)
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: September 8, 2008

Released: September 11, 2008

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ Informal Complaint No. IC 08-S0293838, filed June 30, 2008.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1508 (1998) (Section 258 Order), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Red 8158 (2000); see lifted *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 15996 (2000); Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003); Order, 18 FCC Red 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Red 9560 (1995); *Docket No. 91-64, 7 FCC Red 856 (1995); Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8 FCC Red 3215 (1993); investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on June 30, 2008, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

CRC of the complaint.¹² CRC has failed to respond to the complaint. The failure of CRC to respond or provide proof of the verification is presumed to be clear and convincing evidence of a violation.¹³ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁴ We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that CRC may not pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and CRC may not pursue any collection against Complainant for those charges.

¹² Notice of Informal Complaint IC 08-S0293838 was mailed on July 11, 2008. On July 22, 2008, the Commission received the certified mail return receipt confirming delivery.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. **IT IS FURTHER ORDERED** that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

DA 08-2397

Federal Communications Commission

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of)	
)	
Clear Rate Communications, Inc.	)	IC No. 08-00293963
)	
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	
)	

ORDER

Released: October 30, 2008

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

Informal Complaint No. IC 08-S0293963, filed July 22, 2008

See 47 C.F.R. §§ 64.1100–64.1190.

3
47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996:
Policies and Rules Concerning Unauthorized Changes of Consumers', Long Distance Carriers, CC Docket No.
94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1999), First
Order (Section 238 Order) *stored in part*, *MCJ WorkCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999), First Order
on Reconsideration, 15 FCC Rcd 8158 (2000), *stan. titled*, *MCJ WorkCom v. FCC*, No. 99-1125 (D.C. Cir. June
27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 11906 (2000), *Errata*, DA
No. 00-2163, *trial*, Sept. 25, 2000, *Erratum*, DA No. 00-2192 (rel. Oct. 4, 2000), *Order*, FCC 01-67 (rel. Feb. 22,
2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099
(2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 238, the Commission has taken
various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes
of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9360 (1995),
stored in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC
Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of
Access and Diverse/Line Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 F.C.C.2d 911, 101 F.C.C.2d 935,
reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 22, 2008, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

CRC of the complaint.¹² CRC has failed to respond to the complaint. The failure of CRC to respond or provide proof of the verification is presumed to be clear and convincing evidence of a violation.¹³ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁴ We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that CRC may not pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and CRC may not pursue any collection against Complainant for those charges.

¹² Notice of Informal Complaint IC 08-50293963 was mailed on August 8, 2008. On August 18, 2008, the Commission received the certified mail return receipt confirming delivery.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
Clear Rate Communications	)	IC No. 09-S0295544
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: July 28, 2009

Released: July 31, 2009

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 09-S0295544, filed March 30, 2009.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995) (stayed in part, 11 FCC Rcd 856 (1995)); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on March 30, 2009, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on April 21, 2009.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and find that Clear Rate's verifier marketed internet services in violation of our rules.¹³ We find that Clear Rate has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹² Clear Rate's Response to Informal Complaint No. IC 09-S0295544, received April 21, 2009.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications, Inc.) IC No. 09-S0296166
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: August 24, 2009

Released: August 31, 2009

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 09-S0296166, filed June 22, 2009.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1508 (1998) (Section 258 Order), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Red 8158 (2000), stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 1596 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003); Order, 18 FCC Red 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Red 9560 (1995), stayed in part, 11 FCC Red 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8 FCC Red 3215 (1993); Investigation of Access and Diverse Releaid Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on June 22, 2009, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on July 21, 2009.¹² We have reviewed the response

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRC's Response to Informal Complaint No. IC 08-S0296166, received July 21, 2009.

submitted by CRC; however, CRC did not submit a third party verification or letter of agency, as required by our rules.¹³ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁴

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor CRC may pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor CRC may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120-64.1130.

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications, Inc.) IC No. 09-S0296005
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: August 24, 2009

Released: August 31, 2009

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 09-S0296005, filed May 28, 2009.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15096 (2000), *Entra*, DA No. 00-2163 (rel. Sept. 25, 2000), *Entra*, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on May 28, 2009, alleging that Complainant's telecommunications service provider had been changed CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

CRC of the complaint and CRC responded on July 1, 2009.¹² CRC states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with CRC's response. Clear World's verifier, however, failed to convey that long distance service includes international calls.¹³ We find that CRC has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service and we discuss CRC's liability below.¹⁵

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor CRC may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor CRC may pursue any collection against Complainant for those charges.

¹² CRC's Response to Informal Complaint No. 09-S0296005, received July 1, 2009.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii). The verifier inquired if the person on the call was asked about Internet services.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 08-S002270
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: August 26, 2009

Released: August 31, 2009

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ Informal Complaint No. IC 08-S002270 filed, December 30, 2008.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1508 (1998) (Section 258 Order), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Red 8158 (2000); stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003); Order, 18 FCC Red 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Red 9560 (1993), stayed in part, 11 FCC Red 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8 FCC Red 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.2d 911, 101 F.C.2d 935, reconsideration denied, 102 F.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on December 30, 2008, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on February 7, 2009.¹² Clear Rate did not submit a third party verification or letter of agency, as required by our rules.¹³ We find that

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate's Response to Informal Complaint No. 1C 08-S002270, received February 7, 2009.

¹³ See 47 C.F.R. § 64.1120-64.1130.

Clear Rate has failed to produce clear and convincing evidence that Complainant authorized a carrier change.¹⁴ Therefore, we find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate America, Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications, Inc.) IC No. 09-S0296679
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: October 26, 2009

Released: October 30, 2009

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications, Inc. (CRCI) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRCI's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 09-S0296679, filed August 11, 2009.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), *rev'd in part*, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), *Enna*, DA No. 00-2163 (rel. Sept. 25, 2000), *Erratum*, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *rev'd in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Diverse Rebid Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on August 11, 2009, alleging that Complainant's telecommunications service provider had been changed to CRCI without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRCI of the complaint and CRCI responded on September 2, 2009.¹² We have reviewed the

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRCI's Response to Informal Complaint No. IC 09-50296679, received September 2, 2009.

response submitted by CRCI; however, CRCI did not submit a third party verification or letter of agency, as required by our rules.¹³ Therefore, we find that CRCI's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRCI's liability below.¹⁴

5. CRCI must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor CRCI may pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRCI on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against CRCI IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor CRCI may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120-64.1130.

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications, Inc.) IC No. 09-S002479
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: January 27, 2010

Released: January 29, 2010

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications, Inc. (CRCI) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRCI's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 09-S002479, filed July 13, 2009.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *McI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *McI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 13, 2009, alleging that Complainant's telecommunications service provider had been changed CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on August 1, 2009.¹² CRC states that authorization

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRC's Response to Informal Complaint No. 09-S002479, received August 6, 2009.

was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with CRC's response, and we find that CRC's verifier marketed CRC services, in violation of our rules.¹³ We find that CRC has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service and we discuss CRC's liability below.¹⁵

5. CRCI must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor CRCI may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by CRCI on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against CRCI IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor CRCI may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii). The verifier inquired if the person on the call wanted to add Internet services.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Clear Rate Communications	)	IC No. 09-S02972888
)	
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: April 26, 2010

Released: April 30, 2010

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

Informal Complaint No. IC 09-S0297288, filed December 18, 2009.

2
See 47 C.F.R. §§ 64.1100 - 64.1190.

41 U.S.C. § 238(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 565 (1996). *Implementation of the Subscriber Carrier Selection Changes: Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1506 (1998) (*Section 258 Order*), stored in part, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. May 14, 1999); First Order on Reconsideration, 15 FCC Red 8158 (2000), stay lifted, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 15966 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001). Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003); Order, 18 FCC Red 19997 (2003); Fourth Report and Order, 23 FCC Red 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules concerning Unauthorized Changes in Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Red 9560 (1995), stored in part, 11 FCC Red 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8 FCC Red 3212 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 505 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on December 18, 2009, alleging that Complainant's telecommunications service provider had been changed from Verizon to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on January 14, 2010.¹² We have reviewed

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate Communications's Response to Informal Complaint No. IC 09-50297288, received January 14, 2010.

the response submitted by CRC. CRC's response states that services were confirmed through a third party verification (TPV). CRC has failed to provide the asserted TPV, as required by our rules.¹³ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁴

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier CRC or Verizon may pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier CRC nor Verizon may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120-64.1130.

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 10-S0297601
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: June 29, 2010

Released: June 30, 2010

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ Informal Complaint No. IC 09-S0297601, filed March 1, 2010.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 3099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on March 1, 2010, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on March 22, 2010.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response and find that Clear Rate's verifier marketed Clear Rate's services, in violation of our rules.¹³ We find that Clear Rate did not provide clear and convincing evidence that the person on the call was authorized to make the carrier change. Therefore, we find that Clear Rate's actions resulted in unauthorized changes in Complainant's telecommunications service provider and we discuss Clear Rate's liability below.¹⁴

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹² Clear Rate's Response to Informal Complaint No. IC 10-S0297601, received March 22, 2010.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii). The verifier inquired if the person on the call wanted to add voicemail, internet services, and inside wire maintenance.

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 10-S0297627
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: July 28, 2010

Released: July 30, 2010

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 10-S0297627, filed March 10, 2010.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on March 10, 2010, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on March 31, 2010.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that Clear Rate's verifier marketed Clear Rate's services, in violation of our rules.¹³ We find that Clear Rate has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications, Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹² Clear Rate's Response to Informal Complaint No. 10-S0297627, received March 31, 2010.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii). The verifier inquired if the person on the call wanted to add dial-up internet service.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 10-S0297486
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)
)

ORDER

Adopted: July 28, 2010

Released: July 30, 2010

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 10-S0297486, filed January 29, 2010.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15906 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001), Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on January 29, 2010, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on February 4, 2010.¹² CRC states that authorization

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(e). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRC's Response to Informal Complaint No. IC 10-50297486, received February 24, 2010.

was received and confirmed through third party verification (TPV). We have reviewed the TPV that CRC submitted with its response. We have reviewed the TPV filed with CRC's response, and we find that CRC's verifier marketed CRC's services, in violation of our rules.¹³ We find that CRC has failed to produce clear and convincing evidence that Complainant authorized a carrier change.¹⁴ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁵

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that CRC may not pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and CRC may not pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Federal Communications Commission

DA 08-2397

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications, Inc.) IC No. 08-S0293963
)
)

Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: October 29, 2008

Released: October 30, 2008

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ Informal Complaint No. IC 08-S0293963, filed July 22, 2008.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), *Errata*, DA No. 00-2163 (rel. Sept. 25, 2000), *Erratum*, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 3099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on July 22, 2008, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

CRC of the complaint.¹² CRC has failed to respond to the complaint. The failure of CRC to respond or provide proof of the verification is presumed to be clear and convincing evidence of a violation.¹³ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁴ We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that CRC may not pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and CRC may not pursue any collection against Complainant for those charges.

¹² Notice of Informal Complaint IC 08-S0293963 was mailed on August 8, 2008. On August 18, 2008, the Commission received the certified mail return receipt confirming delivery.

¹³ See 47 C.F.R. § 64.1150(d).

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

**Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau**

Federal Communications Commission **DA 11-760**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
 Clear Rate Communications, Inc.) IC No. 11-S-2960984
)
)
 Complaint Regarding Unauthorized Change of)
 Subscriber's Telecommunications Carrier)

ORDER

Released: April 29, 2011

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of a unauthorized change in a subscriber's selection

Informal Complaint No. IC 11-S2960984, filed February 8, 2011.

2
See 47 C.F.R. §§ 64.1100–64.1190.

47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No.
94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Red 1508 (1998) [Section
258 Order], stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on
258 Order], stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27,
Reconsideration, 15 FCC Red 8138 (2000), stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27,
2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Red 1596 (2000) (Enba., DA No.
00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order FCC 01-67 (rel. Feb. 22, 2001)).
Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Red 5099 (2003).
Order, 18 FCC Red (1997) (2003). Fourth Report and Order, 23 FCC Red 493 (2008). Prior to the adoption of
Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and
Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report
and Order, 10 FCC Red 9500 (1995), stayed in part, 11 FCC Red 8561 (1995); *Policies and Rules Concerning
Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Red 1038 (1992), reconsideration denied, 8
FCC Red 3215 (1993); Investigation of Access and Dispositive Related Tariffs, CC Docket No. 83-1145, Phase I,
101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1993).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on February 8, 2011, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on March 9, 2011.¹² CRC states that authorization

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRC's Response to Informal Complaint No. IC 11-S2960984, received March 9, 2011.

was obtained by third party verification (TPV). CRC, however, failed to provide a recorded copy of the TPV, as required by our rules.¹³ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁴

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁵ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor CRC may pursue any collection against Complainant for those charges.¹⁶ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor CRC may pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120-64.1130.

¹⁴ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁵ See 47 C.F.R. § 64.1160(b).

¹⁶ See 47 C.F.R. § 64.1160(d).

¹⁷ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 10-S2740070
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: April 26, 2011

Released: April 29, 2011

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 10-S2740070, filed August 2, 2010.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stored in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stored in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on August 2, 2010, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on August 21, 2010.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that Clear Rate's verifier marketed Clear Rate's services, in violation of our rules.¹³ We find that Clear Rate has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications, IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹² Clear Rate's Response to Informal Complaint No. IC 10-S2740070, received August 21, 2010.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii). The verifier inquired if the person on the call wanted to sign up for Clear Rate's dial-up internet service.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 10-S2787000
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: April 27, 2011

Released: April 29, 2011

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

¹ Informal Complaint No. IC 10-S2787000, filed September 6, 2010.

² See 47 C.F.R. §§ 64.1100—64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000). Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on September 6, 2010, alleging that Complainant's telecommunications service provider had been changed Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate of the complaint and Clear Rate responded on September 21, 2010.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV filed with Clear Rate's response, and we find that Clear Rate's verifier marketed Clear Rate's services, in violation of our rules.¹³ We find that Clear Rate has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.¹⁴ Therefore, we find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service and we discuss Clear Rate's liability below.¹⁵

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁸

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Clear Rate Communications, Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.

¹² Clear Rate's Response to Informal Complaint No. 10-S2787000, received September 21, 2010.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii). The verifier inquired if the person on the call request to add dial-up internet service.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

¹⁸ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Clear Rate Communications	)	IC No. 11-S003106
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	
)	

ORDER

Adopted: June 27, 2012

Released: July 6, 2012

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (CRC) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that CRC's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 238 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 11-S003106, filed February 22, 2011.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 238 Order*), stored in part, *MCJ World.com v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCJ World.com v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stored in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on February 22, 2011, alleging that Complainant's telecommunications service provider had been changed to CRC without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified CRC of the complaint and CRC responded on April 4, 2011.¹² CRC states that authorization was

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² CRC's Response to Informal Complaint No. IC 11-S0003106, received April 4, 2011.

received and confirmed through third party verification (TPV). We have reviewed the TPV that CRC submitted with its response. During the course of the TPV, the verifier rectified a telephone number presumably associated with the residence, but did not specifically elicit the "telephone numbers to be switched."¹³ Our rules require that the TPV elicit the number that are to be switched, rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.¹⁴ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction...shall not be misleading."¹⁵ We find that CRC has failed to produce clear and convincing evidence that Complainant authorized a carrier change.¹⁶ Therefore, we find that CRC's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss CRC's liability below.¹⁷

5. CRC must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁸ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that CRC may not pursue any collection against Complainant for those charges.¹⁹ Any charges imposed by CRC on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying at the time of the unauthorized change.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against CRC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and CRC may not pursue any collection against Complainant for those charges.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁴ See *Id.*

¹⁵ See 47 C.F.R. § 64.1120(c)(3)(iii) and Fourth Report and Order, 23 FCC Rcd 493 (2008).

¹⁶ See 47 C.F.R. § 64.1150(d).

¹⁷ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

²⁰ See 47 C.F.R. §§ 64.1140, 64.1160.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Clear Rate Communications, Inc.

IC Nos. 11-S3191626
11-S3287236
11-S3290673

Complaints Regarding
Unauthorized Change of
Subscriber's Telecommunications Carrier

12-S003420
12-S003450
12-S003454
12-S003484
12-S319559
12-S3346367
12-S3389371
12-S3409843
12-S3435904
12-S3444979
12-S3450938
12-S3458488

ORDER

Adopted: April 25, 2013

Released: April 26, 2013

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that CRC's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ See Appendix.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), *Errata*, DA No.

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

00-2163 (rel. Sept. 25, 2000). Erratum, DA No. 00-2192 (rel. Oct. 4, 2000). Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified CRC of the complaints and CRC responded.¹³ CRC states that authorization was received and confirmed through third party verifications (TPV) in each case. The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁴ We have reviewed the TPVs that CRC submitted with its responses. In each case, the verifier stated to the person on the call, "to confirm you are 18 years of age or older and that you are the decision maker for this telephone number, please say yes." An affirmative response does not establish whether the person was authorized to make the carrier change.¹⁵ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction...must not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not for instance an upgrade in existing service."¹⁶ We find that CRC's actions were in violation of our carrier change rules, and we discuss CRC's liability below.¹⁷

5. CRC must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carrier nor CRC may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by CRC on the subscribers for service provided after this 30-day period shall be paid by the subscribers to their authorized carrier at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes of

¹¹ See Appendix.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹³ See Appendix.

¹⁴ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁵ See *Cordia Communications Corp.*, 26 FCC Rcd 11063 (2011).

¹⁶ See *Fourth Report and Order*, 23 FCC Rcd 493 (2008)(emphasis added); see also 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁷ If any Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

telecommunications service providers.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 238 of the Communications Act of 1934, as amended, 47 U.S.C. § 238, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against CRC, ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither the CRC nor the authorized carriers may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF RESPONSE
11-S3191626	August 8, 2011	August 30, 2011
11-S3287236	November 29, 2011	January 9, 2012
11-S3290673	December 12, 2011	January 16, 2012
12-S003420	June 1, 2012	June 26, 2012
12-S003450	July 10, 2012	August 13, 2012
12-S003454	July 12, 2012	August 13, 2012
12-S003484	August 16, 2012	September 4, 2012
12-S3319559	January 25, 2012	March 7, 2012
12-S3346367	March 19, 2012	April 11, 2012
12-S3389371	April 29, 2012	June 1, 2012
12-S3409843	May 22, 2012	June 11, 2012
12-S3435904	July 5, 2012	August 6, 2012
12-S3444979	July 16, 2012	August 14, 2012
12-S3450938	July 30, 2012	August 29, 2012
12-S3458488	August 8, 2012	August 28, 2012

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Clear Rate Communications, Inc.) IC No. 10-52887729
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: April 25, 2013

Released: April 26, 2013

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications, Inc. (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions violated the Commission's carrier change rules and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ Informal Complaint No. IC 10-52887729, filed December 8, 2010.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); *Errata*, DA No. 00-2163 (rel. Sept. 25, 2000); *Erratum*, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on December 8, 2010, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on February 1, 2011.¹²

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Clear Rate states that authorization was received and confirmed through third party verification (TPV). The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁵ In the TPV at issue in this case, the verifier instead ask whether the person on the call to "to confirm that you are 18 years of age or older and the decision maker for this phone number, please say yes." The person on the call responded "yes." This does not establish whether the person was authorized to make a carrier change.¹⁶ As we emphasized in the *Fourth report and Order*, "any description of the carrier change transaction...must not be misleading" and verifiers must convey explicitly that "the consumers will have authorized a carrier change, and not, for instance, an upgrade in existing service."¹⁷ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁸

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁹ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither their authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.²⁰ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications, Inc., IS GRANTED.

(Continued from previous page)

¹² Clear Rate's Response to Informal Complaint No. IC 10-5288729, received February 1, 2011.

¹³ See 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁴ Cf. *Consumer Telecom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁵ *Fourth Report and Order*, 23 FCC Rcd 493 (2008) (emphasis added); see also 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁶ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁷ See 47 C.F.R. § 64.1160(b).

¹⁸ See 47 C.F.R. § 64.1160(d).

¹⁹ See 47 C.F.R. §§ 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Clear Rate nor their authorized carrier may pursue any collection against Complainant for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Clear Rate Communications)
IC No. 10-52865130)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: May 13, 2013

Released: May 17, 2013

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions violated the Commission's carrier change rules and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 10-52865130, filed November 8, 2010.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003), Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on November 8, 2010, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on November 23,

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

2010.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹³ In the TPV at issue in this case, the verifier instead states to the person on the call, "to confirm that you are 18 years or older and the decision maker for this phone number, please say yes." An affirmative response does not confirm that the person was authorized to make a carrier change.¹⁴ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction...shall not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not, for instance, an upgrade in existing service."¹⁵ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁶

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁷ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither their authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁸ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications, IS GRANTED.

¹² Clear Rate's Response to Informal Complaint No. IC 10-52865130, received November 23, 2010.

¹³ See 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁴ Cf. *Consumer Telecom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁵ See also 47 C.F.R. § 64.1120(e)(3)(iii), *Fourth Report and Order*, 23 FCC Rcd 493 (2008).

¹⁶ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁷ See 47 C.F.R. § 64.1160(b).

¹⁸ See 47 C.F.R. § 64.1160(d).

¹⁹ See 47 C.F.R. §§ 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Clear Rate nor their authorized carrier may pursue any collection against Complainant for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Clear Rate Communications, Inc.) IC Nos. 12-S003486
12-S003520
Complaints Regarding)
Unauthorized Change of) 12-S003527
Subscriber's Telecommunications Carrier) 12-S3500079

ORDER

Adopted: August 6, 2013

Released: August 8, 2013

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints¹ alleging that Clear Rate Communications, Inc. (CRC) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that CRC's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.
2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ See Appendix.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), *Enraia*, DA No. 00-2163 (rel. Sept. 25, 2000), *Enraia*, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 1997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.2d 911, 101 F.C.2d 935, *reconsideration denied*, 102 F.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified CRC of the complaints and

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

CRC responded.¹³ CRC states that authorization was received and confirmed through third party verifications (TPV) in each case. The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁴ We have reviewed the TPVs that CRC submitted with its responses. In each case, the verifier stated to the person on the call, "to confirm you are 18 years of age or older and that you are the decision maker for this phone number, please say yes." An affirmative response does not establish whether the person was authorized to make the carrier change.¹⁵ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction... must not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not for instance an upgrade in existing service."¹⁶ We find that CRC's¹⁷ actions were in violation of our carrier change rules, and we discuss CRC's liability below.

5. CRC must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carrier nor CRC may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by CRC on the subscribers for service provided after this 30-day period shall be paid by the subscribers to their authorized carrier at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes of telecommunications service providers.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against CRC ARE GRANTED.

¹³ See Appendix.

¹⁴ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁵ *Cf. Consumer Telecom, Inc.*, Order on Reconsideration, 27 FCC Red 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁶ See *Fourth Report and Order*, 23 FCC Red 493 (2008)(emphasis added); see also 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁷ If any Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

²⁰ See 47 C.F.R. §§ 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither the CRC nor the authorized carriers may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF RESPONSE
12-S003486	August 16, 2012	September 21, 2012
12-S003520	October 24, 2012	November 30, 2012
12-S003527	November 13, 2012	December 6, 2012
12-S3500079	October 19, 2012	November 21, 2012

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
 Clear Rate Communications) IC No. 12-S3349520
 Complaint Regarding)
 Unauthorized Change of)
 Subscriber's Telecommunications Carrier)

ORDER**Adopted: August 27, 2013****Released: August 28, 2013**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions violated the Commission's carrier change rules and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ Informal Complaint No. IC 12-S3349520, filed March 9, 2012.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCJ WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000). Errata, DA No. 00-2163 (rel. Sept. 25, 2000). Erratum, DA No. 00-2192 (rel. Oct. 4, 2000). Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130;(2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absorb the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on March 9, 2012, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on April 11, 2012.¹² Clear Rate states that authorization was received and confirmed through third party verification (TPV). The Commission's rules require that the verification elicit, amongst other things,

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(e). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate's Response to Informal Complaint No. IC 12-S3349520, received April 11, 2012.

confirmation that the person on the call is "authorized to make the carrier change."¹³ In the TPV at issue in this case, the verifier instead asks the person on the call, "To confirm that you are over 18 years of age or older and that you are the decision maker for this phone number, please say yes, after the tone?" An affirmative response does not establish whether the person was authorized to make the carrier change. A switch from one carrier to another carrier differs from merely making changes to the customer's service.¹⁴ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction...shall not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not, for instance, an upgrade in existing service."¹⁵ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁶

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁷ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither their authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁸ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Clear Rate nor their authorized carrier may pursue any collection against Complainant for those

¹³ See 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁴ *Cf. Consumer Telecom. Inc. Order on Reconsideration*, 27 FCC Rcd 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁵ See *Fourth Report and Order*, 23 FCC Rcd 493 (2008) (emphasis added); see also 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁶ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁷ See 47 C.F.R. § 64.1160(b).

¹⁸ See 47 C.F.R. § 64.1160(d).

¹⁹ See 47 C.F.R. §§ 64.1140, 64.1160.

charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC Nos. 12-S3474064
12-S3474312
)
Complaints Regarding) 12-S3428058
)
Unauthorized Change of) 13-S003652
Subscriber's Telecommunications Carrier) 13-S3556940
) 13-S3656440
) 13-S3660938
) 13-S3670661

ORDER

Adopted: December 6, 2013

Released: December 13, 2013

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints¹ alleging that Clear Rate Communications (Clear Rate) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.
2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ See Appendix.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130;(2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absorb the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Clear Rate of the complaints

and Clear Rate responded.¹³ Clear Rate states that authorization was received and confirmed through third party verifications (TPV) in each case. The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁴ We have reviewed the TPVs that Clear Rate submitted with its responses. In each case, the verifier instead states to the person on the call, "to confirm that you are 18 years of age or older and that you are the decision maker for this telephone number please say yes after the tone." An affirmative response does not establish whether the person was authorized to make the carrier change. A switch from one carrier to another carrier differs from merely making changes to the customer's service.¹⁵ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction...must not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not for instance an upgrade in existing service."¹⁶ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁷

5. Clear Rate must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carrier nor Clear Rate may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by Clear Rate on the subscribers for service provided after this 30-day period shall be paid by the subscribers to their authorized carrier at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes of telecommunications service providers.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against

¹³ See Appendix.

¹⁴ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁵ *Cf. Consumer Telecom, Inc. Order on Reconsideration*, 27 FCC Rcd 5430 (CCB 2012) ("The verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁶ See *Fourth Report and Order*, 23 FCC Rcd 493 (2008)(emphasis added); see also 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁷ If any Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

²⁰ See 47 C.F.R. §§ 64.1140, 64.1160.

Clear Rate Communications, ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither the Clear Rate nor the authorized carriers may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
12-S3474064	September 4, 2012	September 21, 2012
12-S3474312	September 10, 2012	October 2, 2012
12-S3428058	June 13, 2012	July 11, 2012
13-S003652	July 29, 2013	September 18, 2013
13-S3556940	January 14, 2013	April 22, 2013
13-S3656440	April 28, 2013	June 11, 2013
13-S3660938	May 13, 2013	June 21, 2013
13-S3670661	May 28, 2013	July 10, 2013

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Clear Rate Communications, Inc.	)	IC Nos. 13-S003596
	)	13-S003605
Complaints Regarding	)	13-S3621641
Unauthorized Change of	)	13-S3636357
Subscriber's Telecommunications Carrier	)	13-S3652821
	)	13-S3662969

ORDER

Adopted: May 22, 2014

Released: May 23, 2014

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complainants' alleging that Clear Rate Communications (Clear Rate) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ See Appendix.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes: Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Diversion Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1995).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁷ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁸ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.⁹

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.¹⁰ Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Clear Rate of the complaints

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

and Clear Rate responded.¹³ Clear Rate states that authorization was received and confirmed through third party verifications (TPV) in each case. The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁴ We have reviewed the TPVs that Clear Rate submitted with its responses. In each case, the verifier instead asks the person on the call, "to confirm that you are 18 years of age or older and that you are the decision maker for this telephone number, please say yes after the tone." An affirmative response does not establish whether the person was authorized to make the carrier change. A switch from one carrier to another carrier differs from merely making changes to the customer's service.¹⁵ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction... must not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not for instance an upgrade in existing service."¹⁶ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁷

5. Clear Rate must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carrier nor Clear Rate may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by Clear Rate on the subscribers for service provided after this 30-day period shall be paid by the subscribers to their authorized carrier at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes of telecommunications service providers.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against

¹³ See Appendix.

¹⁴ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁵ Cf. *Consumer Telecom. Inc.*, Order on Reconsideration, 27 FCC Red 5430 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁶ See *Fourth Report and Order*, 23 FCC Red 493 (2008) (emphasis added); see also 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁷ If any Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

²⁰ See 47 C.F.R. §§ 64.1140, 64.1160.

Clear Rate Communications, ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither the Clear Rate nor the authorized carriers may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF RESPONSE
13-S003596	March 12, 2013	April 9, 2013
13-S003605	March 26, 2013	May 22, 2013
13-S3621641	March 11, 2013	April 12, 2013
13S3636337	April 4, 2013	May 22, 2013
13-S3652821	April 26, 2013	May 31, 2013
13-S3662969	April 23, 2013	June 21, 2013

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications) IC No. 13-S3685297
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: June 26, 2014 Released: June 27, 2014

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint¹ alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions violated the Commission's carrier change rules and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

¹ Informal Complaint No. IC 13-S3685297, filed June 24, 2013.

² See 47 C.F.R. §§ 64.1100–64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rd 1508 (1998) (*Section 258 Order*), stayed in part, *MC1 WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rd 8158 (2000), stay lifted, *MC1 WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000); Erratum, DA No. 00-2192 (rel. Oct. 4, 2000); Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rd 5099 (2003); Order, 18 FCC Rd 10997 (2003); Fourth Report and Order, 23 FCC Rd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rd 9560 (1995), stayed in part, 11 FCC Rd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rd 1038 (1992), reconsideration denied, 8 FCC Rd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 F.C.C.2d 911, 101 F.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant's complaint on June 24, 2013, alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹¹ we notified Clear Rate of the complaint and Clear Rate responded on July 24, 2013.¹²

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² Clear Rate's Response to Informal Complaint No. IC 13-53685297, received July 24, 2013.

Clear Rate states that authorization was received and confirmed through third party verification (TPV). The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹³ We have reviewed the TPV that Clear Rate submitted with its response. Instead, the verifier instead asks the person on the call, "To confirm that you are 18 years of age or older and that you are the decision maker for this phone number, please say yes after the tone." An affirmative response does not establish whether the person was authorized to make the carrier change and, therefore, the verifier has not elicited confirmation that the person is authorized to make a carrier change.¹⁴ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction... shall not be misleading," and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not, for instance, an upgrade in existing service."¹⁵ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁶

5. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁷ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither their authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁸ Any charges imposed by Clear Rate on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.¹⁹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

¹³ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁴ Cf. *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Red 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁵ See *Fourth Report and Order*, 23 FCC Red 493 (2008) (emphasis added); see also 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁶ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁷ See 47 C.F.R. § 64.1160(b).

¹⁸ See 47 C.F.R. § 64.1160(d).

¹⁹ See 47 C.F.R. §§ 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither Clear Rate nor their authorized carrier may pursue any collection against Complainant for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Clear Rate Communications, Inc.	)	IC Nos. 14-S003740
	)	14-S3803356
Complaints Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: December 28, 2015

Released: December 31, 2015

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complainant's allegations that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service providers without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in unauthorized changes in Complainant's telecommunications service providers and we grant Complainant's complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ See Appendix.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stored in part, MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), *stay lifted, MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15906 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stored in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-04, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase 1, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Clear Rate of the complaints and Clear Rate responded.¹³ Clear Rate states that authorization was received and confirmed through third party verifications (TPV) in each case. The Commission's rules require that the

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹³ See Appendix.

verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁴ We have reviewed the TPVs that Clear Rate submitted with its responses. In each case, the verifier instead asks the person on the call, "to confirm that you are 18 years of age or older and that you are the decision maker for this phone number, please say yes after the tone?" An affirmative response does not establish whether the person was authorized to make the carrier change. A switch from one carrier to another carrier differs from merely making changes to the customer's service.¹⁵ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction...must not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not for instance an upgrade in existing service."¹⁶ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁷

5. Clear Rate must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carrier nor Clear Rate may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by Clear Rate on the subscribers for service provided after this 30-day period shall be paid by the subscribers to their authorized carrier at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes of telecommunications service providers.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against Clear Rate Communications, ARE GRANTED.

¹⁴ See 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁵ Cf. *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5430 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁶ See *Fourth Report and Order*, 23 FCC Rcd 493 (2008) (emphasis added); see also 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁷ If either Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

²⁰ See 47 C.F.R. §§ 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither the Clear Rate nor the authorized carriers may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
14-S003740	February 28, 2014	April 7, 2014
14-S3803356	March 24, 2014	April 8, 2014

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Clear Rate Communications, Inc.) IC Nos. 14-S3773865
) 14-S3812093
Complaints Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: December 28, 2015

Released: December 31, 2015

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complainants' alleging that Clear Rate Communications (Clear Rate) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Clear Rate's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*,

¹ See Appendix.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000), stay lifted, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), stayed in part, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), reconsideration denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase 1, 101 F.C.C.2d 911, 101 F.C.C.2d 935, reconsideration denied, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Clear Rate of the complaints and Clear Rate responded.¹³ Clear Rate states that authorization was received and confirmed through third party verifications (TPV) in each case. The Commission's rules require that the

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix.

¹² 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹³ See Appendix.

verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change."¹⁴ We have reviewed the TPVs that Clear Rate submitted with its responses. In each case, the verifier instead asks the person on the call, "to confirm that you are 18 years of age or older and that you are the decision maker for this phone number, please say yes?" An affirmative response does not establish whether the person was authorized to make the carrier change. A switch from one carrier to another carrier differs from merely making changes to the customer's service.¹⁵ As we emphasized in the *Fourth Report and Order*, "any description of the carrier change transaction... must not be misleading" and verifiers should convey explicitly that "the consumers will have authorized a carrier change, and not for instance an upgrade in existing service."¹⁶ We find that Clear Rate's actions were in violation of our carrier change rules, and we discuss Clear Rate's liability below.¹⁷

5. Clear Rate must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carrier nor Clear Rate may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by Clear Rate on the subscribers for service provided after this 30-day period shall be paid by the subscribers to their authorized carrier at the rates the subscribers were paying to their authorized carriers at the time of the unauthorized changes of telecommunications service providers.²⁰

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against Clear Rate Communications, ARE GRANTED.

¹⁴ See 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁵ Cf. *Consumer Telecom, Inc.*, Order on Reconsideration, 27 FCC Red 5430 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service from a different carrier").

¹⁶ See *Fourth Report and Order*, 23 FCC Red 493 (2008)(emphasis added); see also 47 C.F.R. § 64.1120(e)(3)(iii).

¹⁷ If either Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

¹⁸ See 47 C.F.R. § 64.1160(b).

¹⁹ See 47 C.F.R. § 64.1160(d).

²⁰ See 47 C.F.R. §§ 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither the Clear Rate nor the authorized carriers may pursue any collection against Complainants for those charges.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF RESPONSE
14-S3773865	January 2, 2014	March 4, 2014
14-S3812093	March 28, 2014	April 18, 2014

STATE OF INDIANA)
COUNTY OF MARION)
IN RE: CLEAR RATE)
COMMUNICATIONS, INC.,)
Respondent.)

IN THE MARION CIRCUIT COURT
CAUSE NO. 0401-13-0139 (13-0139)
FILED
(54) MAY 28 2013
Elizabeth R. White

**ORDER APPROVING
ASSURANCE OF VOLUNTARY COMPLIANCE**

Cause comes to be heard on the Petition for Approval of Assurance of Voluntary Compliance ("AVC") presented to the Court by Petitioner Attorney General Gregory F. Zoeller. The Court, having read the petition and the AVC, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction over the parties and the subject matter of this cause pursuant to Ind. Code 24-4.7-5-5; and
2. The parties have read and understand the terms and conditions of this AVC and recommended that this Court approve the AVC; and
3. The AVC will adequately protect the public interest as expressed in Ind. Code 24-4.7.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Assurance of Voluntary Compliance executed on or about 04/29/2013 is APPROVED.

SO ORDERED this date, MAY 28 2013

Rein Armborg
JUDGE, Marion Circuit Court

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

November 29, 2007

Harold Stout
-vs-
Clear Rate Communications, Inc.
Alleged Slammimg

07-0406

Document Processor
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Business Filings Inc.
600 S. Second St.
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Harold Stout
PO Box 145
Middletown, IL 62666

Judith A. Riley
Telecom Professionals
Clear Rate Communications, Inc
5909 NW Expy., Ste. 403
Oklahoma City, OK 73132
jriley@telecompliance.net

NOTICE OF COMMISSION ACTION

Dear Sir/Madam:

Notice is hereby given that the Commission in conference on November 28, 2007, GRANTED the Joint Motion to Dismiss, filed by Harold Stout and Clear Rate Communications, Inc. on August 30, 2007.

Related memoranda will be available on our web site (www.icc.illinois.gov/e-docket) in the docket number referenced above.

Sincerely,

Elizabeth A. Rolando
Chief Clerk

EAR:ml
Administrative Law Judge Riley

In the matter, on the Commission's own motion,)
directing CLEAR RATE COMMUNICATIONS, INC.,)
to show cause why it should not be found to be in)
violation of Section 315 of the Michigan)
Telecommunications Act, 1991 PA 179, as amended,)
and Case No. U-17655.)
_____)
Case No. U-17951

At the November 19, 2015 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Sally A. Talberg, Commissioner
Hon. Norman J. Saari, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On September 23, 2015, the Commission issued an order directing Clear Rate Communications, Inc. (Clear Rate) to show cause why it should not be found in violation of Section 315 of the Michigan Telecommunications Act, MCL 484.2315 (MTA), and Case No. U-17655 (September 23 order).

The statute directs the Commission to "require each provider of basic local exchange service to provide a text telephone telecommunications device for the deaf at cost" to eligible individuals and to public safety answering points; and to "require each provider of basic local exchange service to provide a telecommunication relay service whereby persons using a text telephone-telecommunications device for the deaf can communicate with persons using a voice telephone." MCL 484.2315(1) and (2). It further authorizes each provider to determine whether it prefers to

offer telecommunications relay service (TRS) "on its own, jointly with other basic local exchange service providers, or by contract with other telecommunication providers." MCL 484.2315(2). In the September 11, 2014 order in Case No. U-17655, the Commission directed local exchange providers to file plans regarding TRS provision.

In the September 23 order, the Commission found that Clear Rate appeared to be out of compliance with certain provisions of MCL 484.2315 and Case No. U-17655. Those provisions included the requirement to provide TRS service to its Michigan customers. The order directed Clear Rate to file a response no later than October 8, 2015. In addition, Clear Rate was directed to appear at a prehearing conference on October 29, 2015.

On October 8, 2015, Clear Rate filed public and confidential versions of its response, testimony, and exhibits. Clear Rate appeared at the October 29, 2015 prehearing conference, as did the Commission Staff (Staff). Subsequent to the prehearing conference, the Staff and Clear Rate entered into a joint stipulation, agreeing to suspend certain scheduled activities in the proceeding while pursuing settlement.

On November 4, 2015, Clear Rate filed a copy of the notice provided to its customers regarding TRS transition, along with a cover letter indicating when it was sent to customers, in the dockets in Case Nos. U-17655 and U-17951. On November 9, 2015, Clear Rate made certain confidential contracts available to members of the Staff for inspection. Also on November 9, 2015, Clear Rate supplied to the Staff, and confidentially filed in this docket and in Case No. U-17655, information including a current TRS routing diagram and a letter describing the way that Clear Rate was providing TRS service to its Michigan customers. The letter contains an assurance that Clear Rate will notify the Commission if there are any changes in the TRS that it

provides to its customers in compliance with the MTA (including changes to the provider of its TRS services).

On November 9, 2015, the Staff and Clear Rate entered into a settlement agreement, attached hereto as Exhibit A. The settlement agreement recommends that the Commission issue an order dismissing this proceeding and finding that Clear Rate is providing TRS in compliance with MCL 484.2315 and Case No. U-17655.

The Commission finds that the settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement attached as Exhibit A is approved.

B. Clear Rate Communications, Inc., is currently in compliance with MCL 484.2315 and Case No. U-17655.

C. The show cause proceeding against Clear Rate Communications, Inc., is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the

Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 484.2203(12).

To comply with the Michigan Rules of Court's requirement to notify the Commission of an

appeal, appellants shall send required notices to both the Commission's Executive Secretary and to

the Commission's Legal Counsel. Electronic notifications should be sent to the Executive

Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney

General - Public Service Division at pmgpl@michigan.gov. In lieu of electronic submissions,

paper copies of such notifications may be sent to the Executive Secretary and the Attorney General

- Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

EXHIBIT A

John D. Quackenbush, Chairman

Sally A. Talberg, Commissioner

Norman J. Saari, Commissioner

By its action of November 19, 2015.

Mary Jo Kunkle, Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
directing Clear Rate Communications, Inc. to show)
cause why it should not be found to be in violation of)
Section 315 of the Michigan Telecommunications Act,)
1991 PA 179, as amended, and Case No. U-17655.)

Case No. U-17951

SETTLEMENT AGREEMENT

Pursuant to Section 78 of the Michigan Administrative Procedures Act of 1969 ("APA"), as amended, MCL 24.278, and Rule 431 of the Rules of Practice and Procedure before the Michigan Public Service Commission ("Commission's Rules"), R 792.10431, the undersigned Parties agree as follows:

1. This Settlement Agreement between and among Clear Rate Communications, Inc. ("Clear Rate Communications") and the Michigan Public Service Commission Staff ("Staff") (collectively, the "Parties") is intended by the Parties to settle all issues before the Michigan Public Service Commission ("Commission") related to the Commission's September 23, 2015 Order to Show Cause directing Clear Rate Communications to show cause why it should not be found to be in violation of Section 315 of the Michigan Telecommunications Act, 1991 PA 179, as amended, and Case No. U-17655 ("Order to Show Cause").
2. On September 23, 2015, the Commission issued an Order to Show Cause directing Clear Rate Communications to respond to various allegations regarding Clear Rate Communications' provision of access for its Michigan customers to a telecommunications relay

service ("TRS"), as required by Section 315 of the Michigan Telecommunications Act ("MTA"), MCL 484.2315, and the Commission's Orders issued in MPSC Case No. U-17655.

3. On October 8, 2015, Clear Rate Communications filed, in this docket, both "Public" and "Confidential" versions of Clear Rate Communications, Inc.'s Response to Order to Show Cause.
4. On October 8, 2015, Clear Rate Communications filed, in this docket, both "Public" and "Confidential" versions of the Verified Direct Testimony of Thane Namy in Support of Clear Rate Communications, Inc.'s Response to Order to Show Cause along with "Confidential" and "Public" supporting Exhibits.
5. Staff requested access to the contracts referenced in Mr. Namy's Confidential Testimony, at Page 12, lines 9 through 20, as "Confidential Contracts."
6. On October 29, 2015, at the prehearing, a scheduling order was established in this case. Both parties issued discovery in this matter. Staff responded to Clear Rate Communications' discovery.
7. On November 4, 2015, the parties entered into a joint stipulation ("Stipulation"), which was filed in this matter, with the hopes of pursuing settlement in this case, and agreed to suspend responses to Staff's discovery and the Parties' motions to compel, while pursuing settlement.
8. On November 4, 2015, as agreed upon in the Stipulation, Clear Rate Communications filed the notice of TRS transition to its customers along with a cover letter indicating when it was sent to the customers in Case Nos. U-17655 and U-17951.
9. On this date, November 9, 2015, pursuant to the Stipulation, Clear Rate Communications made the Confidential Contracts available to 3 (three) members of the

Commission's Telecommunications Division Staff and an Assistant Attorney General assigned to the Michigan Attorney General's Public Service Division, at the Michigan Public Service Commission offices, located at 7109 W. Saginaw Highway, Lansing, Michigan, including the following:

- a. The names of the parties to the contract,
- b. The date that the contracts were agreed to (regarding TRS services),
- c. The language that states specifically that TRS service is being provided,
- d. The signatures of both parties agreeing to this contract, and
- e. The initial pages to the original wholesale agreement.

10. Per the Stipulation and its confidential letter, Clear Rate Communications agrees to notify the Commission if there are any changes in the TRS that it provides to its customers in compliance with the MTA (including changes to the provider of its TRS services).

11. As stipulated, on this date, November 9, 2015, Clear Rate Communications has supplied to Staff and confidentially filed in Case Nos. U-17655 and U-17951 the following information:

- a. A current TRS routing diagram (similar to the diagram that was filed in Thane Nanny's confidential testimony).
- b. A letter stating:
 - i. Clear Rate Communications obtained a contract with a new provider for TRS service for its facilities based residential and commercial customers,
 - ii. The names of the parties to the contract for TRS service, and
 - iii. The date when the TRS transition took place and TRS services were available to Clear Rates Communications' facilities based residential and business customers.

12. Clear Rate Communications has demonstrated to Staff that Clear Rate Communications is providing TRS in compliance with Section 315 of the MTA and the Commission's Orders in MPSC Case No. U-17655. Staff recommends that the Commission issue an Order dismissing this proceeding finding that Clear Rate Communications is providing

TRS in compliance with Section 315 of the MTA and the Commission's Orders in MPSC Case No. U-17655.

13. This Settlement Agreement is entered into for the sole and express purpose of reaching a compromise among the Parties. All offers of settlement and discussions relating to this Settlement Agreement are considered privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the Parties to this Settlement Agreement nor the Commission shall make any reference to, or use this Settlement Agreement or the Order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided however, such references may be made to enforce or implement the terms of the Settlement Agreement and the Order approving it.

14. This Settlement Agreement is reasonable and in the public interest, and will reduce the time and expense of the Commission, its Staff, and Clear Rate Communications.

15. The Parties agree to waive Section 81 of the APA, MCL 24.281, as it applies to the issues in this proceeding, if the Commission approves this Settlement Agreement without modification.

16. This Settlement Agreement may be executed in any number of counterparts, each considered an original, and all counterparts that are executed shall have the same effect as if they were the same instrument.

17. The parties recommend that the ALJ suspend all dates in the schedule until the Commission has a chance to review this Settlement Agreement and enter an order regarding this matter. If the Commission does not approve this Settlement Agreement, the Staff reserves the

right to request that another prehearing conference be held to establish an appropriate further schedule in this matter.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed by their respective counsel as of the date below.

For: Clear Rate Communications, Inc.

By: *John C. Rashes*
Haran C. Rashes (P-54883)
General Counsel
Clear Rate Communications, Inc.

For: The Michigan Public Service
Commission Staff

By: *Heather M. S. Durian*
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Assistant Attorney General
for the MPSC Staff

Dated: November 9, 2015

Dated: November 9, 2015

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
DEBORAH KAMINSKI against CLEAR RATE)
COMMUNICATIONS, INC.)

Case No. U-16555

At the April 12, 2011 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On February 15, 2011, Deborah Kaminski filed a complaint against Clear Rate Communications, Inc., alleging a billing dispute. On March 28, 2011, the complainant filed a request to withdraw the complaint.

THEREFORE, IT IS ORDERED that the complaint of Deborah Kaminski against Clear Rate Communications, Inc., is dismissed without prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHIGAN PUBLIC SERVICE COMMISSION

IN RE: INTRAMTA SWITCHED
ACCESS CHARGES LITIGATION

Civil Action No. 3:14-MD-2587-D
(MDL No. 2587)

Orjiakor N. Isigbo, Chairman

THIS DOCUMENT RELATES TO
CIVIL ACTION NOS.

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of April 12, 2011.

Mary Jo Kunkle, Executive Secretary

THIS DOCUMENT RELATES TO
CIVIL ACTION NOS.

3:14-CV-1724-D, 3:14-CV-3210-D,
3:14-CV-4418-D, 3:14-CV-4420-D,
3:14-CV-4422-D, 3:14-CV-4423-D,
3:14-CV-4424-D, 3:14-CV-4425-D,
3:14-CV-4426-D, 3:14-CV-4427-D,
3:14-CV-4428-D, 3:14-CV-4429-D,
3:14-CV-4430-D, 3:14-CV-4433-D,
3:14-CV-4445-D, 3:14-CV-4446-D,
3:14-CV-44469-D, 3:14-CV-4470-D,
3:14-CV-4472-D, 3:14-CV-4473-D,
3:14-CV-4474-D, 3:14-CV-4546-D,
3:14-CV-4547-D, 3:14-CV-4561-D,
3:14-CV-4564-D, 3:14-CV-4571-D,
3:14-CV-4572-D, 3:14-CV-4573-D,
3:14-CV-4574-D, 3:14-CV-4577-D,
3:14-CV-4579-D, 3:14-CV-4580-D,
3:14-CV-4581-D, 3:14-CV-4585-D,
3:15-CV-0019-D, 3:15-CV-0020-D,
3:15-CV-0021-D, 3:15-CV-0022-D,
3:15-CV-0023-D, 3:15-CV-0033-D,
3:15-CV-0034-D, 3:15-CV-0035-D,
3:15-CV-0036-D, 3:15-CV-0040-D,
3:15-CV-0044-D, 3:15-CV-0045-D,
3:15-CV-0047-D, 3:15-CV-0066-D,
3:15-CV-0078-D, 3:15-CV-0114-D,
3:15-CV-0115-D, 3:15-CV-0124-D,
3:15-CV-0134-D, 3:15-CV-0137-D,
3:15-CV-0142-D, 3:15-CV-0198-D,
3:15-CV-0228-D, 3:15-CV-0260-D,
3:15-CV-0301-D, 3:15-CV-0563-D,
3:15-CV-0705-D, 3:15-CV-0931-D

3:15-CV-1040-D, 3:15-CV-1041-D, §
3:15-CV-1052-D, 3:15-CV-1053-D, §
3:15-CV-1069-D, 3:15-CV-1070-D, §
3:15-CV-1071-D, 3:15-CV-1102-D, §
3:15-CV-1177-D, and 3:15-CV-1179-D. §

MEMORANDUM OPINION
AND ORDER

In these MDL proceedings, defendants' joint motion to dismiss under Fed. R. Civ. P. 12(b)(6) principally presents the question whether local exchange carriers ("LECs") can charge interexchange carriers ("IXCs") access fees for access services that the LECs provide the IXCs to enable them to exchange interstate wireless intraMTA calls—that is, interstate wireless calls that originate and terminate within the same Major Trading Area ("MTA"). Concluding that they can under their filed federal tariffs, the court grants defendants' joint motion and dismisses plaintiffs' federal-law claims with prejudice. Concluding that plaintiffs have failed to plead plausible claims that the LEC defendants cannot charge access fees under filed state tariffs, the court grants defendants' joint motion, but it also grants plaintiffs leave to replead their state-law claims. Defendant AT&T Corp. ("AT&T") moves to dismiss or stay two of these cases, contending that the court should refer the central issues in dispute to the Federal Communications Commission ("FCC") under the doctrine of primary jurisdiction. Because there are no substantial issues for the FCC to decide, the court declines to make a referral to the FCC, and it denies AT&T's motion.

I

Plaintiffs Sprint Communications Company L.P. ("Sprint") and MCI Communications Services, Inc. / Verizon Select Services Inc. ("Verizon") sue hundreds of LECs doing business throughout the United States, alleging that the LECs have charged and are continuing to charge IXCs access fees¹ on intraMTA wireless calls, in violation of FCC and court decisions that prohibit this practice for wireless intraMTA calls between Commercial Mobile Radio Service ("CMRS") carriers and LECs that originate and terminate within the same MTA. Verizon Compl. ¶ 1.² Sprint and Verizon bring claims under 47 U.S.C. §§ 206 and 207 for alleged violations of 47 U.S.C. §§ 201(b) and 203 for charging access fees on interstate intraMTA wireless calls; assert state-law breach of contract claims based on alleged breaches of tariffs governing interstate wireless intraMTA calls; and plead state-law breach of contract claims based on alleged breaches of tariffs governing intrastate wireless

¹ Plaintiffs' complaints refer to these fees as "switched access charges." Because the briefing generally omits the term "switched," the court for convenience will likewise use the terms "access fees" or "access charges."

² Plaintiffs rely on the corrected first amended complaints in *Sprint Communications Co. v. Central Telephone Co. of Texas*, No. 3:14-CV-1724-D ("Sprint Complaint"), and *MCI Communications Services, Inc. v. Cameron Telephone Co.*, No. 3:14-CV-3210-D ("Verizon Complaint"), as representative of the complaints filed in all the pending cases. The court will do so as well.

In deciding defendants' motions, the court construes plaintiffs' complaints in the light most favorable to them, accepts as true all well-pleaded factual allegations, and draws all reasonable inferences in their favor. See, e.g., *Lovick v. Ritemoney Ltd.*, 378 F.3d 433, 437 (5th Cir. 2004). "The court's review [of a Rule 12(b)(6) motion] is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint." *Lone Star Fund V (U.S.) L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citation omitted).

intraMTA calls. They essentially seek declaratory relief that they do not owe access fees, damages for fees they have paid in the past, and awards of other relief, such as attorney's fees.³

The Judicial Panel on Multidistrict Litigation transferred these cases to this court under 28 U.S.C. § 1407 for coordinated or consolidated pretrial proceedings. *See In re: IntraMTA Switched Access Charges Litig.*, 67 F.Supp.3d 1378 (J.P.M.L. 2014). The month before the MDL proceedings were assigned to this court, several LECs filed with the FCC a Petition for Declaratory Ruling to Clarify the Applicability of the IntraMTA Rule to LEC-IXC Traffic ("FCC Petition"). The FCC Petition requests that the FCC confirm that plaintiffs owe access charges, rather than reciprocal compensation, when they use access services to originate or terminate calls, even if the calls are within the same MTA. The FCC received public comment through March 11, 2015, and the FCC Petition remains pending.

In general terms,⁴ LECs typically provide wireline (i.e., landline) local telephone company service to their customers. They own or lease the equipment that is necessary to provide wireline telephone service within a specific geographical area, known as a "local exchange." Wireline calls originating and terminating within the same local exchange are

³Sprint and Verizon are also suing each other's affiliated entities, because each is an IXC that has LEC affiliates. In an April 20, 2015 order, the court clarified, consistent with a ruling it made at the initial scheduling conference, that Sprint and Verizon are not required at this time to file responsive pleadings to each other's complaints.

⁴A more detailed explanation of the background facts is unnecessary to understand the holdings and reasoning of this memorandum opinion and order.

considered "local" calls.

IXCs generally provide long distance services, delivering wireline calls between different local exchanges (i.e., interexchange calls). IXCs generally own only long distance facilities; they rely on LECs to originate and terminate long distance calls between end-users. IXCs pay LECs a fee—known as an "access charge"—to obtain access to the LEC's network. If a LEC customer places a long distance call, the LEC routes the call to the IXC selected by the customer, and the LEC charges the IXC an originating access charge. If the LEC receives a long distance call for termination that has been originated by another LEC's customer and delivered by an IXC—generally over "Feature Group D" facilities—the LEC charges the IXC a terminating access charge. LECs establish their access fees in filed tariffs. Rates for interstate long distance toll calls are filed with the FCC. Rates for intrastate long distance toll calls are filed with state public utility or public service commissions.

In 1996, Congress enacted the Telecommunications Act of 1996 (the "Telecommunications Act"), which brought competition to local telephone markets by requiring telephone companies to open their networks to competitors. Instead of access fees, LECs receive "reciprocal compensation" from other carriers for transporting and terminating traffic that originates on the network facilities of the other carriers. The rates for reciprocal compensation are set by the terms of interconnection agreements, and reciprocal compensation rates are typically much lower than access charges.⁵ LECs often observe a

⁵The briefing and oral argument address why access fees are higher due to subsidies included in such fees.

“bill-and-keep” arrangement under which a LEC keeps its own local customers’ fees, and does not charge the other LEC, when the volume of calls between them is roughly balanced.

For wireline calls, a local call is one that originates and terminates within a local calling area established by LECs in state tariffs or by state regulatory commissions. For wireless calls, a local call is one that originates and terminates within a single MTA, as defined by the FCC, that is, an intraMTA call. An MTA is typically much larger geographically than is a local calling area for wireline calls, and an MTA may encompass several states. Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same MTA, is subject to reciprocal compensation. An intraMTA call can involve a wireline end-user as the originator or terminator of a call involving a wireless end-user. If an MTA encompasses more than one state, some intraMTA traffic within that MTA can be intrastate and other traffic interstate.

In these MDL proceedings, Sprint and Verizon—both IXCs—allege that the defendant LECs are not permitted to impose access fees on them for wireless intraMTA traffic. Almost all defendants jointly move to dismiss plaintiffs’ actions under Rule 12(b)(6) for failure to state a claim.⁶ Although not all defendants participating in the joint motion

⁶Defendants did not file their Rule 12(b)(6) motion on behalf of Verizon’s LEC affiliates, Sprint, AT&T, or any defendants for which no counsel has yet filed a notice of appearance.

have joined all aspects of the motion,⁷ most defendants contend that the filed tariff doctrine bars plaintiffs’ claims; the FCC did not exempt plaintiffs from defendants’ tariffs; if defendants’ tariffs do not apply, then state contract law—the “voluntary payment doctrine”—bars plaintiffs’ claims; plaintiffs have not alleged a violation of state law; the federal two-year statute of limitations applies to any state-law claims; and, in the alternative, the court should refer the issues to the FCC under the primary jurisdiction doctrine. AT&T has not joined defendants’ joint motion; it moves separately under Rule 12(b)(6) to dismiss or stay the two cases in which it is a defendant, contending that the court should refer the issues to the FCC under the doctrine of primary jurisdiction. Three other defendants jointly move in a separate motion to dismiss under Rule 12(b)(1) based on tribal immunity. Plaintiffs oppose the motions. The court has heard oral argument.⁸

II

Under Rule 12(b)(6), the court evaluates the pleadings by “accept[ing] ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.’” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). To survive

⁷Certain defendants—the AT&T LECs, various Peerless Network entities, and the CenturyLink affiliates—have joined defendants’ joint motion but have filed notices that they do not join specific arguments asserted in the joint motion. None of these notices, however, relates to a ground on which the court is relying to grant defendants’ joint motion.

⁸The Rule 12(b)(1) motion to dismiss that is based on tribal immunity was not orally argued, and it is decided today in a separate memorandum opinion and order.

defendants' motions, plaintiffs' complaints must allege enough facts "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant[s] [are] liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*; see also *Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level[.]"). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'shown'—'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (brackets omitted) (quoting Rule 8(a)(2)). Furthermore, under Rule 8(a)(2), a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Although "the pleading standard Rule 8 announces does not require 'detailed factual allegations,'" "it demands more than '"[l]abels and conclusions.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). And "'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

III

The court turns first to defendants' contention that plaintiffs' federal-law claims are barred by the filed rate doctrine.

A

Defendants posit that plaintiffs' claims fail because, based on the facts pleaded, the filed rate doctrine requires plaintiffs to pay the access charges specified in defendants' tariffs filed with the FCC, and it bars any claim or theory that has the effect of causing plaintiffs to pay less than the full tariffed amounts.

Plaintiffs respond that, "[f]irst and foremost, the filed tariff defense rises and falls on whether the intramTA rule bars access charges on intramTA traffic." Ps. Resp. 36. They maintain that a filed tariff cannot be enforced when it is contrary to law, and that, for the reasons they have otherwise presented in their briefing, LECs cannot lawfully charge access fees on intramTA traffic. Second, plaintiffs posit that defendants' reliance on the filed rate doctrine is misplaced because the traffic at issue does not involve access services as described in defendants' tariffs, since the tariffed access charges are inapplicable to intramTA traffic. Third, plaintiffs assert that defendants have not met their burden of demonstrating that their tariffs apply to the charges at issue in the complaints because they have not, for example, presented their tariffs to the court.

B

"[T]he 'filed rate doctrine[.] . . . forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority." *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) (citations omitted). The doctrine exists because "[i]t would undermine the congressional scheme of uniform rate regulation to allow a[] court to award as damages a rate never filed with the [regulatory agency] and thus never

found to be reasonable within the meaning of the Act.” *Id.* at 579. “[T]he rate of the carrier duly filed is the only lawful charge [and d]eviation from it is not permitted upon any pretext.” *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915).

Under the filed rate doctrine, “any ‘filed rate’—that is, one approved by the governing regulatory agency—is per se reasonable and unassailable in judicial proceedings brought by ratepayers.” *Tex. Commercial Energy v. TXU Energy, Inc.*, 413 F.3d 503, 508 (5th Cir. 2005) (some internal quotation marks omitted). Accordingly, “once a carrier’s tariff is approved by the FCC, the terms of the federal tariff are considered to be ‘the law’ and to therefore ‘conclusively and exclusively enumerate the rights and liabilities’ as between the carrier and the customer.” *Evans v. AT&T Corp.*, 229 F.3d 837, 840 (9th Cir. 2000) (quoting *Marcus v. A T & T Corp.*, 138 F.3d 46, 56 (2d Cir. 1998)). “Not only is a carrier forbidden from charging rates other than as set out in its filed tariff, but customers . . . may not bring an action against a carrier that would invalidate, alter or add to the terms of the filed tariff” *Id.* (citations omitted).

“Under the filed-rate doctrine, federal law preempts claims concerning the price at which service is to be offered, and . . . claims concerning the services that are offered.”

Access Telecom, Inc. v. MCI Telecomms. Corp., 197 F.3d 694, 711 (5th Cir. 1999) (citing *Am. Tel. & Tel. Co. v. Cent. Office Tel., Inc.*, 524 U.S. 214, 220-26 (1998)).

IV

Plaintiffs first challenge defendants’ reliance on the filed rate doctrine on the ground that a filed tariff cannot be enforced when it is contrary to law, and that the LECs cannot lawfully charge access fees on intraMTA traffic.

A

Following divestiture in the telecommunications industry in the 1980s, and at the time the Telecommunications Act was enacted in 1996, LECs were permitted to charge IXCs access fees for providing access service. In 1996, FCC regulations defined “[a]ccess service” as “services and facilities provided for the origination or termination of any interstate or foreign telecommunication.” 47 C.F.R. § 69.2(b) (1996). Section 69.5(b) provided that “[c]arrier’s carrier charges shall be computed and assessed upon all [IXCs] that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.” 47 C.F.R. § 69.5(b) (1996).

The Telecommunications Act leaves in place the access charge regime between LECs and IXCs. Concerning LECs’s obligations to other carriers and providers, including IXCs, the Act explicitly provides:

On and after February 8, 1996, each [LEC], to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to [IXCs] and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (*including receipt of compensation*) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the [FCC], *until such restrictions*

and obligations are explicitly superseded by regulations prescribed by the [FCC] after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the [FCC].

47 U.S.C. § 251(g) (emphasis added). The Telecommunications Act thus preserves the restrictions and obligations concerning LECs—"including receipt of compensation"—until later explicitly superseded by FCC regulations. *Id.*; see, e.g., *Atlas Tel. Co. v. Okla. Corp. Comm'n*, 400 F.3d 1256, 1263 (10th Cir. 2005) (citing D.C. Circuit's explanation that "§ 251(g) is a transitional provision designed to keep in place certain restrictions and obligations, including the existing access charge regime, until such provisions are superseded by FCC regulations." (emphasis added) (citing *WorldCom, Inc. v. FCC*, 288 F.3d 429, 432-33 (D.C. Cir. 2002))).

Plaintiffs' challenge to defendants' invocation of the filed rate doctrine thus turns on whether the FCC has by regulation explicitly superseded the pertinent compensation scheme that was the existing practice at the time the Telecommunications Act was enacted. Stated another way, the question is whether the right of LECs to impose access fees on IXCs for access services that enable the IXCs to exchange interstate wireless intraMTA calls is still governed by the compensation practice in effect when the Telecommunications Act took effect in 1996, or is now prohibited by an FCC regulation promulgated thereafter.

B

Plaintiffs contend that the FCC's order in *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 F.C.C.R. 15499 (Aug. 8, 1996) ("Local Competition Order"), prohibits LECs from imposing access charges on intraMTA traffic. The court disagrees.

Nothing in the Local Competition Order explicitly supersedes the existing practice regarding access charges that LECs assess IXCs. Although the Local Competition Order requires LECs "to enter into reciprocal compensation arrangements with CMRS providers . . . for the transport and termination of traffic on each other's networks," Local Competition Order, 11 F.C.C.R. at 15517, ¶ 34 (emphasis added), nothing obligates LECs to enter into the same arrangements with IXCs. Significantly, ¶ 30 of the Local Competition Order acknowledges that "[n]othing in this Report and Order alters the collection of access charges paid by an [IXC] under Part 69 of the Commission's rules, when the incumbent LEC provides exchange access service to an [IXC], either directly or through service resale." *Id.* at 15515-16, ¶ 30 (emphasis added). 47 C.F.R. §§ 69.2(b) and 69.5(b) are included in Part 69. As the district court stated in a case that is now part of these MDL proceedings:

the 1996 *Local Competition Order* distinguishes between service arrangements between LECs and CMRS providers and service arrangements between LECs and IXCs, and did not apply its conclusion that service arrangements involving intraMTA traffic between CMRS providers and LECs are subject to reciprocal compensation, not access charges, to service arrangements involving such traffic between LECs and

IXCs.

Sprint Commc'ns Co. v. Butler-Bremer Mut. Tel. Co., 2014 WL 4980539, at *4 (N.D. Iowa Oct. 6, 2014) (citation omitted).

Another part of the Local Competition Order—which addresses “CMRS-Related Issues”—also supports this reading. After two paragraphs that explain that a LEC’s obligation under § 251(b)(5) to establish reciprocal compensation arrangements applies to all local traffic transmitted with CMRS providers, and that, under § 251(b)(5), a LEC cannot charge a CMRS provider or other carrier for terminating LEC-originated traffic, the order states in ¶ 1043, in pertinent part:

We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties’ locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. *Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some “roaming” traffic that transits incumbent LECs’ switching facilities, which is subject to interstate access charges.* Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

Local Competition Order, 11 F.C.C.R. at 16016-17, ¶ 1043 (emphasis added) (footnotes omitted). Stated differently, under the “existing practice”—which the Local Competition

Order does not change—access charges *are* owed when an IXC carries interstate wireless traffic.

The FCC reaffirmed this position in *In re TSR Wireless, LLC* (TSR Wireless, LLC v. *U.S. West Commc'ns, Inc.*), 15 F.C.C.R. 11166 (June 21, 2000) (“TSR Wireless”):

Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. It does not address the charges that carriers may impose upon their end users. Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries. MTAs typically are large areas that may encompass multiple LATAs, and often cross state boundaries. Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. *Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.*

TSR Wireless, 15 F.C.C.R. at 11184, ¶ 31 (emphasis added) (footnotes omitted). The italicized sentence is footnoted with a citation to the pages of the Local Competition Order that contain footnote 1043. *Id.* at ¶ 31 n.105.

Plaintiffs also rely on the Local Competition Order to argue that the FCC prohibits LECs from imposing access charges on all wireless intraMTA traffic, which would include wireless intraMTA traffic carried by an IXC as an intermediate carrier. They cite ¶ 1036 of the Local Competition Order, contending that traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates

under § 251(b)(5) rather than interstate and intrastate access charges. But ¶ 1036 simply sets out the intraMTA rule; it does not mention IXCs, much less explicitly supersede the existing access charge regime between LECs and IXCs. Nor is plaintiffs' reading of ¶ 1036 reasonable given the FCC's statement that it is defining "the local service area for calls to or from a CMRS network *for the purposes of applying reciprocal compensation obligations under section 251(b)(5)*." Local Competition Order, 11 F.C.C.R. at 16014, ¶ 1036 (emphasis added), and its clarification in ¶ 1034 that "the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic *do not apply to the transport or termination of interstate or intrastate interexchange traffic*," *id.* at 16013, ¶ 1034 (emphasis added). Moreover, plaintiffs' reading of ¶ 1036 cannot be reconciled with the FCC's statement in ¶ 30 that the Local Competition Order does not alter the collection of access charges paid by an IXC under Part 69 of the FCC's rules, which includes 47 C.F.R. § 69.5(b).

C

Plaintiffs also rely on 47 C.F.R. § 51.703(b), which provides: "A LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic that originates on the LEC's network."¹⁰ Plaintiffs contend that § 51.703(b) prohibits LECs entirely from assessing charges on "any other telecommunications carrier" for intraMTA wireless traffic that originates on the LEC's network. Ps. Resp. 9 (quoting

¹⁰The 1996 version of the rule is substantively identical to the current version, but uses the term "local telecommunications traffic" instead of "Non-Access Telecommunications Traffic."

§ 51.703(b)). They cite ¶ 1042 of the Local Competition Order¹¹ for the proposition that this prohibition applies to a CMRS provider and to an intermediate carrier, like an IXC. The court disagrees.

Section 51.703(b) is part of Subpart H of Part 51 (Interconnection) of the FCC Regulations. Subpart H is entitled "Reciprocal Compensation for Transport and Termination of Telecommunications Traffic." Reciprocal compensation is distinct from access fees.

Moreover, § 51.701(a) states, in pertinent part, that the provisions of Subpart H apply to "Non-Access Reciprocal Compensation for transport and termination of Non-Access Telecommunications Traffic between LECs and other telecommunications carriers." Section 51.701(b) provides that "Non-Access Telecommunications Traffic" means:

¹¹Paragraph 1042 provides:

We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

¹²Local Competition Order, 11 F.C.C.R. at 16016, ¶ 1042.

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, *except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access; or*

(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same [MTA], as defined in § 24.202(a) of this chapter.

47 C.F.R. § 51.701(b) (emphasis added). Plaintiffs are therefore relying on provisions that govern *reciprocal compensation* and *non-access* traffic, neither of which applies to an IXC.

As the Ninth Circuit explained in *Western Radio Services Co. v. Qwest Corp.*, 678 F.3d 970 (9th Cir. 2012), traffic carried by an IXC is access-based rather than reciprocal-compensation-based.

[I]n the regulation addressing the scope of the transport and termination pricing rules, the FCC distinguishes between traffic exchanged between a LEC and a CMRS provider and traffic exchanged between a LEC and a non-CMRS provider. *See* 47 C.F.R. § 51.701(b). In the former situation, reciprocal compensation applies to all traffic exchanged “that, at the beginning of the call, originates and terminates within the same Major Trading Area” *Id.* § 51.701(b)(2). In the latter situation, reciprocal compensation applies to all traffic exchanged *except* “telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access” *Id.* § 51.701(b)(1). *Traffic carried by an IXC, which is access-based rather than reciprocal-compensation-based, falls within this regulatory exception to the reciprocal compensation rules.*

Id. at 988 (second emphasis added) (citation omitted). Plaintiffs’ reliance on § 51.703(b) is therefore misplaced.

D

Plaintiffs also rely on certain federal cases decided between 2003 and 2012 to argue that access charges do not apply to wireless intraMTA traffic. But this reliance is misplaced, because none of these decisions addresses whether a LEC is permitted to charge an IXC access fees for providing access services that enable the IXC to exchange interstate wireless intraMTA traffic. *See Sprint Commc’ns Co.*, 2014 WL 4980539, at *4 (“the federal appellate decisions on which Sprint relies [including those discussed below] also do not involve interpretation or policy analysis of FCC regulations regarding payment arrangements between LECs and IXCs.”).

For example, in *Atlas* the Tenth Circuit addressed a dispute between rural LECs and CMRS providers regarding whether the LECs were obligated to enter into reciprocal compensation agreements with the CMRS providers for intraMTA calls delivered via an intermediate carrier. *Atlas*, 400 F.3d at 1259, 1261. The court held that the plaintiff LECs “ha[d] a mandatory duty to establish reciprocal compensation agreements with the CMRS providers . . . for calls originating and terminating within the same MTA,” and that nothing in the FCC regulations provided “support for the [LECs’s] contention that reciprocal compensation requirements do not apply when traffic is transported on an IXC network.” *Id.* at 1264 (emphasis added). The Tenth Circuit did not address or decide the question presented in these MDL proceedings: whether LECs are permitted to charge IXCs access fees for exchanging interstate wireless intraMTA traffic.

Similarly, in *Alma Communications Co. v. Missouri Public Service Commission*, 490

F.3d 619 (8th Cir. 2007), the Eighth Circuit addressed whether a "[LEC] and the cell-phone provider must share 'reciprocal compensation'" for landline telephone calls to cellular phones within the same MTA, even when such calls were routed through a long distance provider. *Id.* at 620 (emphasis added). The court did not address whether the LEC could charge the IXC access charges.

And in *Western Radio Services* the Ninth Circuit concluded that the application of access charges "to calls exchanged between a CMRS provider and a LEC," when those calls are carried by an IXC, violated the Telecommunications Act, but the court explicitly noted that "[t]raffic carried by an IXC, which is access-based rather than reciprocal-compensation-based, falls within this regulatory exception to the reciprocal compensation rules." *W. Radio Servs.*, 678 F.3d at 973, 988 (emphasis added).

Plaintiffs also rely on *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006) ("*INS II*"), in which the Eighth Circuit agreed that the FCC's reciprocal compensation rules do not directly address intermediary compensation, and upheld, as not inconsistent with federal law, the district court's conclusion that Qwest, an intermediary carrier, "need not pay access charges because access charges are not available for 'local' traffic." *Id.* at 1096. Key to the district court's conclusion, however, was the fact that Qwest was acting as an "intermediate" or "transiting" carrier, *not as an IXC*. The district court explained that "[t]he regulatory classification of Qwest is, however, pertinent as there exists within the reciprocal compensation rules an exception for IXCs." *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F.Supp.2d 850, 871 (S.D. Iowa 2005) (emphasis added), *aff'd*, 466 F.3d

1091 (8th Cir. 2006).

Finally, plaintiffs' reliance on *Rural Iowa Independent Telephone Ass'n v. Iowa Utilities Board*, 476 F.3d 572 (8th Cir. 2007), is similarly misplaced because it also dealt with Qwest, who was not acting as an IXC. Instead, Qwest was "act[ing] as a conduit to facilitate what is essentially a transaction between a wireless carrier and a local exchange carrier." *Id.* at 577. Moreover, the Eighth Circuit noted that the LEC's practice of requiring that its customers dial a "0" or "1" at the beginning of an intramTA wireless call resulted in the calls' "be[ing] carried by an IXC and subject to access charges." *Id.* at 578 (emphasis added).

In sum, none of the court decisions on which plaintiffs rely supports their position that LECs are precluded by FCC rules from charging IXCs access fees for access services that they provide the IXCs to enable them to exchange interstate wireless intramTA calls.

E

Plaintiffs contend that in *In re Connect America Fund, A National Broadband Plan for Our Future*, Report and Order and Further Notice of Proposed Rule-Making, 26 F.C.C.R. 17663 (Nov. 18, 2011) ("Connect America Order"), the FCC "defin[ed] the compensation regime for intramTA wireless traffic with reference to the origin and termination of the traffic, not by the identity of the carriers involved in transporting that traffic." *Ps. Resp.* 17. Plaintiffs rely on ¶ 41, which contains the following sentence: "we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, *without exception*." Connect

America Order, 26 F.C.C.R. at 17678, ¶ 41 (emphasis added). Plaintiffs also cite ¶ 1007, which states:

In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area, the call is subject to access charges, not reciprocal compensation, even if the call originates and terminates within the same MTA. One commenter in this proceeding asks us to affirm that such traffic is subject to reciprocal compensation. We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC. Similarly, intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.

Id. at 18042-43, ¶ 1007. According to plaintiffs, the FCC's use of the word "traffic," as opposed to framing the issue as whether LECs or CMRS providers may impose access charges on *one another* for intraMTA calls, evidences a "square[] reject[ion]" of the LECs's position regarding access charges on IXCs. Ps. Resp. 17-18. They argue that, by citing *Alma*, 490 F.3d 619, *INS II*, 466 F.3d 1091, and *Atlas*, 400 F.3d 1256, in footnote 2133 of the Connect America Order, the "FCC left no doubt that LECs cannot impose access charges on intraMTA traffic, regardless of which carriers transport it." Ps. Resp. 18.

Plaintiffs' reliance on the single sentence they quote from ¶ 41 lacks force. The Connect America Order does not expressly apply to compensation between a LEC and an IXC for intraMTA calls. See *Sprint Commc'ns Co.*, 2014 WL 4980539, at *4 ("Likewise,

the [Connect America Order] only 'clarified' payment arrangements between LECs and CMRS providers, but did not address payment arrangements between LECs and IXCs.").

And although ¶ 41 does contain the sentence on which plaintiffs rely—"we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, *without exception*," *id.* (emphasis added)—the sentence must be read in context. Paragraph 41, as a whole, is addressed to "*CMRS-Local Exchange Carrier (LEC) Compensation*." Connect America Order, 26 F.C.C.R. at 17678, ¶ 41 (italics in original). And the final sentence of ¶ 41—the sentence on which plaintiffs rely—is preceded by five other sentences, including the following three that place the final sentence in context:

We clarify certain aspects of *CMRS-LEC* compensation to reduce disputes and address existing ambiguity. We adopt bill-and-keep as the default methodology for all *non-access CMRS-LEC* traffic. To provide rate-of-return LECs time to adjust to bill-and-keep, we adopt an interim transport rule for rate-of-return carriers to specify LEC transport obligations under the default bill-and-keep framework for *non-access* traffic exchanged between *these carriers*.

Connect America Order, 26 F.C.C.R. at 17678, ¶ 41 (emphasis added). It is therefore apparent that when the FCC affirmed, without exception, that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA is subject to reciprocal compensation, it was referring to compensation between a CMRS and a LEC. Paragraph 41 does not mention other carriers that might be involved in exchanging such traffic. It does not address IXCs or any aspect of the compensation

permitted between LECs and IXCs. Nor does ¶ 1007, on which plaintiffs also rely, address compensation between LECs and IXCs. *See W. Radio Servs.*, 678 F.3d at 989 (“Further, we note that the FCC has issued a new report and order, effective December 29, 2011, that cites this case law approvingly and clarifies that *in the LEC-CMRS context*, this is indeed how the reciprocal compensation rules are to operate.” (emphasis added)).

F

Under 47 U.S.C. § 251(g), the proper methodology for determining whether LECs can charge IXCs for the access services at issue is to identify the baseline practice on the date immediately preceding February 8, 1996 and then determine whether the FCC by regulation has *explicitly superseded* that practice. Defendants have established that the FCC has not yet explicitly superseded the baseline compensation practices that applied on the date immediately preceding February 8, 1996 to the access services that LECs provide IXCs to enable them to exchange interstate wireless intraMTA calls. And plaintiffs have failed to show otherwise.

Plaintiffs have pointed to no FCC regulation that explicitly supersedes the authority of LECs to impose such access fees. The Local Competition Order does not explicitly address the LEC-IXC compensation regime. And the order explicitly states that it is not altering the collection of access charges paid by an IXC under Part 69 of the FCC’s rules when the incumbent LEC provides exchange access service to an IXC, directly or through service resale. Nor does the Connect America Order explicitly address whether a LEC can charge an IXC access fees for the access services at issue. And to the extent plaintiffs

attempt to identify statements in court opinions to establish that LECs cannot charge IXCs access fees for access services provided on intraMTA calls, none of the decisions on which they rely is squarely on point.

Plaintiffs essentially attempt to undercut defendants’ reliance on the filed rate doctrine, and establish that access fees are unlawful, by citing snippets they have pulled from FCC orders and relying on the reasoning of court opinions that do not decide the question. The fundamental fallacy in this approach should be apparent. If plaintiffs are relegated to attempting to divine Delphic clues from FCC orders, compelled to cobble together a series of excerpts from these orders, and forced to rely on court opinions that do not decide the question, to maintain that they together establish that access fees are now unlawful, this means the FCC has *not yet* by regulation *explicitly superseded* the relevant pre-February 8, 1996 baseline compensation practices. Indeed, plaintiffs’ approach is in a sense somewhat akin to attempting to prove a case through circumstantial evidence. But while circumstantial evidence can appropriately be relied on when proving facts at trial, it is no substitute for proof of explicit regulation by the FCC.

Given the FCC’s efforts to promote wireless communications, and the literal explosion of wireless communication devices, the reciprocal compensation regime for which plaintiffs argue may be the way of the near future. But today, the question is whether the FCC has by regulation explicitly superseded the pre-February 8, 1996 statutory baseline that governs how access fees are charged for access services that LECs provide IXCs to enable them to exchange interstate wireless intraMTA calls. And the answer is, it has not.

V

Although plaintiffs principally oppose defendants' reliance on the filed rate doctrine on the ground that the tariffs are contrary to law, they also rely on two other arguments.

Plaintiffs posit that the filed tariff defense is inapposite because the traffic at issue does not involve access services as described in defendants' tariffs, since they are transporting intraMTA traffic, which is not such a service. Because the court has concluded above that the services at issue are subject to access fees, this basis for plaintiffs' opposition necessarily fails as well.

Plaintiffs also contend that defendants have not met their burden of demonstrating that their tariffs apply to the charges at issue in the complaint because they have not, for example, presented their tariffs to the court. This argument is refuted by plaintiffs' complaints. Plaintiffs allege that defendants bill originating and terminating switched access charges on interstate wireless intraMTA calls; that defendants' interstate access tariffs do not explicitly exempt wireless intraMTA calls; and that defendants' tariffs "apply by their terms to wireless intraMTA calls," Verizon Compl. ¶ 62.¹¹ Because plaintiffs have specifically alleged that defendants' tariffs apply to the charges at issue, it is unnecessary for defendants to present their tariffs to the court.

¹¹See *supra* note 2 for the source of this reference to Verizon's complaint.

VI

The court now turns to defendants' contentions that plaintiffs have failed to plead state-law claims on which relief can be granted.

A

Plaintiffs allege claims for breach of contract based on defendants' practice of charging IXC's access charges, via tariffs filed with state public utilities commissions, for access services relating to intrastate wireless intraMTA calls. Defendants move to dismiss plaintiffs' state-law claims, contending that plaintiffs admit that the access charges they paid were described in defendants' tariffs, and that they do not allege that the services they ordered and received were not as described in any tariffs; that plaintiffs do not cite any *state* law that prohibits defendants from collecting access charges for plaintiffs' use of access services to exchange intrastate intraMTA calls; that plaintiffs' state-law claims for breach of the state-filed tariffs fail to detail how, if at all, defendants breached any obligations described in the tariffs; and that, to the extent plaintiffs contend that *federal* law prohibits LECs from charging IXC's access fees for access services related to intraMTA calls, federal law preempts all state laws on the issue.

Plaintiffs respond that they are not required at the motion to dismiss stage to detail how defendants breached their tariffs or to attach copies of the hundreds of tariffs defendants allegedly breached; that a number of defendants' tariffs expressly prohibit access charges on intraMTA traffic; that even where defendants' tariffs do not expressly prohibit access

charges on intramTA traffic, the tariffs must be interpreted to incorporate the relevant state and/or federal laws prohibiting this conduct, and that a number of states have state intramTA rules apart from federal law; that even in those states that have not expressly enacted a state intramTA rule, the tariffs still must incorporate the federal intramTA rule for interstate and intrastate intramTA traffic; and that defendants are incorrect that all of the state-law breach of contract claims are entirely preempted by federal law.

B

The court concludes that plaintiffs have failed to plead facially plausible state-law claims on which relief can be granted. To the extent plaintiffs challenge defendants' filed state tariffs on the basis that federal law prohibits access charges, the court has already concluded above that such charges are permissible under federal law.

To the extent plaintiffs intend to challenge defendants' filed state tariffs on the basis that they are prohibited under state law, plaintiffs have not plausibly pleaded any state laws that prohibit these charges. Although they cite examples of such state laws in their response, *see* Ps. Resp. 48,¹² the complaints themselves are vague and conclusory, without any reference to a specific state law that prohibits LECs from charging IXCs access charges on

¹² Plaintiffs argue in their response that a number of states have state intramTA rules apart from the federal law, citing examples from Ohio, Montana, Texas, South Dakota, and Missouri. Ps. Resp. 48. But the examples plaintiffs cite are state intramTA rules that largely copy the language used in the federal statutes and regulations that the court has discussed above; none appears to prohibit LECs—to a greater extent than do the federal statutes and regulations after which they are modeled—from charging access fees when IXCs exchange intrastate intramTA calls.

intrastate intramTA calls.

Finally, to the extent plaintiffs argue that the state tariffs themselves do not allow access charges for intrastate intramTA calls, they have not plausibly pleaded that defendants' charges for these types of calls violate the filed state tariffs. Even if plaintiffs are not required to attach to their complaints copies of the hundreds of tariffs at issue, they are required to plausibly plead that the filed state tariffs do not allow access charges on intramTA calls, which they have not done.¹³ In support of their state-law claims, plaintiffs allege the following:

Defendants' intrastate switched access tariffs on file with the State Commission constitute contracts between Defendants and any purchaser of services from those tariffs, which includes Verizon.

Defendants have charged, and continue to charge, Verizon switched access charges on wireless intramTA calls that do not qualify for such charges, in violation of their respective intrastate access tariffs.

Defendants are in breach of their respective state tariff provisions when they bill Verizon for wireless intramTA calls, as they do not qualify for such charges. To the extent the tariffs purport to allow such charges, they are unenforceable.

¹³ In their response, plaintiffs provide examples of three filed state tariffs that they argue prohibit LECs from charging IXCs access charges on intrastate intramTA calls. But in some of these examples, the tariffs do not go further than incorporating the relevant federal intramTA rules, which the court has already concluded do not prohibit LECs from charging IXCs access charges on interstate wireless intramTA calls. *See, e.g.*, Ps. Resp. 47 (citing Georgia tariff with the following parenthetical: "(incorporating the federal intramTA regulations into the tariff)").

Verizon Compl. ¶¶ 71-73 (paragraph numbers omitted).¹⁴ These broad allegations could be interpreted to plead that intrastate intramTA calls “do not qualify for such charges” because they are prohibited by federal law, by state law, or by filed state tariffs. But without additional detail that enables the court to reasonably infer *why* plaintiffs allege that these calls do not “qualify” for access charges, and without pleading any specific provision of state law, federal law, or a specific filed state tariff that the charges allegedly violate, plaintiffs have failed to plead a facially plausible claim.

Accordingly, the court grants defendants’ motion to dismiss plaintiffs’ state-law claims.

VII

Because the court concludes that the filed rate doctrine bars plaintiffs’ federal-law claims and that plaintiffs have failed to plead facially plausible state-law claims, it need not reach defendants’ other arguments in support of dismissal: that if defendants’ tariffs do not apply, then state contract law—the “voluntary payment doctrine”—bars plaintiffs’ claims; and that the federal two-year statute of limitations applies to plaintiffs’ state-law claims.¹⁵

¹⁴In the Sprint and Verizon complaints—which are representative, Ps. Resp. 3—plaintiffs plead state-specific and LEC-specific breach of contract claims. All of the state-law breach claims in the Sprint and Verizon complaints, however, follow the same format and incorporate language nearly identical to the example set forth here.

¹⁵Nor need the court consider defendants’ alternative contention that the court should refer the issues to the FCC under the primary jurisdiction doctrine.

VIII

AT&T has advised the court by notice that it does not join defendants’ joint motion to dismiss. It moves separately under Rule 12(b)(6) to dismiss or stay the two cases in which it is a named defendant¹⁶ based on the doctrine of primary jurisdiction, pending a referral to the FCC.¹⁷

“The doctrine of primary jurisdiction attempts to maintain ‘proper relationships between the courts and administrative agencies’ by suspending judicial process pending the ‘referral’ of certain issues to an administrative agency for its views.” *Elam v. Kan. City S. Ry. Co.*, 635 F.3d 796, 809 (5th Cir. 2011) (quoting *United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956)). Primary jurisdiction “applies where a claim is originally cognizable

¹⁶The cases are Nos. 3:14-CV-4571-D and 3:15-CV-0035-D.

¹⁷In a footnote, AT&T distinguishes its capacity as an IXC from its capacity as a LEC in the two cases in which its motion is filed. It explains that it is a separate corporate entity from the other AT&T entities participating in these MDL proceedings, but is affiliated with those AT&T entities.

In the above-captioned cases, AT&T Corp. is named as a defendant in its capacity as a local exchange carrier (“LEC”) that provides certain switched access services. AT&T Corp. also provides long distance services as an interexchange carrier (“IXC”). AT&T Corp. is a separate corporate entity from the other AT&T entities participating in this MDL proceeding, but is affiliated with those other AT&T entities. The other AT&T entities are generally incumbent LECs, and do not offer long distance services. AT&T Corp. and the other AT&T entities have each engaged separate outside counsel.

AT&T Mot. I n.1.

in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body[.]” *W. Pac. R.R.*, 352 U.S. at 63-64 (quoting *Gen. Am. Tank Car Corp. v. El Dorado Terminal Co.*, 308 U.S. 422, 433 (1940)). Although “[n]o fixed formula exists,” agency referral is favored when “(a) it will promote even-handed treatment and uniformity in a highly regulated area, or when sporadic action by federal courts would disrupt an agency’s delicate regulatory scheme; or (b) the agency possesses expertise in a specialized area with which the courts are relatively unfamiliar.” *Elam*, 635 F.3d at 811 (alteration in original) (citing *W. Pac. R.R.*, 352 U.S. at 64, and *Mercury Motor Express, Inc. v. Brinke*, 475 F.2d 1086, 1092 (5th Cir. 1973)). But “the doctrine of primary jurisdiction is not a doctrine of futility.” *Id.* (quoting *Local Union No. 189, Amalgamated Meat Cutters, & Butcher Workmen of N. Am., AFL-CIO v. Jewel Tea Co.*, 381 U.S. 676, 686 (1965)). The court need not refer a matter to “an expensive and merely delaying administrative proceeding” when there are no substantial issues for the agency to decide.” *Id.* (quoting *Jewel Tea*, 381 U.S. at 686).

For the reasons explained above, the court holds that defendants are entitled to rely on the filed rate doctrine because it is lawful under federal law to charge IXC’s access fees for access services that the LECs provide to enable the IXCs to exchange interstate wireless intramTA calls. The authority in place in 1996 for LECs to charge access fees for such services has not been explicitly superseded by FCC regulation. Accordingly, there are no substantial issues for the FCC to decide.

IX

Although the court is granting defendants’ joint motion to dismiss, it will permit plaintiffs to replead their state-law claims. “[D]istrict courts often afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the defects are incurable or the plaintiffs advise the court that they are unwilling or unable to amend in a manner that will avoid dismissal.” *In re Am. Airlines, Inc. Privacy Litig.*, 370 F.Supp.2d 552, 567-68 (N.D. Tex. 2005) (Fitzwater, J.) (citation omitted) (MDL proceedings). In this case, the defects in plaintiffs’ federal-law claims are incurable: these claims are barred by the filed rate doctrine regardless how plaintiffs replead, because LECs are permitted under federal law to charge IXC’s access fees for the access services at issue. But the court cannot say that the defects in plaintiffs’ state-law claims are similarly incurable. For example, in support of their state-law claims, plaintiffs maintain in their response that a number of defendants’ state tariffs expressly prohibit access charges for intramTA calls. Plaintiffs may therefore be able to plausibly allege a state-law claim, at least on the basis that a specific state law or a filed state tariff actually prohibits the defendant LEC from charging IXC’s access charges for the intrastate intramTA calls at issue.

Accordingly, within 28 days of the date this memorandum opinion and order is filed, plaintiffs may file amended complaints that replead their state-law claims.¹⁸

¹⁸For cause, or by agreement of the parties and with court approval, the court will extend the deadline for plaintiffs to replead.

* * *

For the reasons explained, defendants' joint motion to dismiss is granted. Plaintiffs' federal-law claims are dismissed with prejudice. Plaintiffs' state-law claims are dismissed, but plaintiffs are granted leave to replead their state-law claims. AT&T's motion to dismiss on primary jurisdiction grounds, or, in the alternative, for stay pending referral is denied.

SO ORDERED.

November 17, 2015.


SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Issued: November 18, 2013

CASE NO. 13-0447-T-C

FRONTIER WEST VIRGINIA INC. and CITIZENS
TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA,
dba FRONTIER COMMUNICATIONS OF WEST VIRGINIA,
both public utilities,

Complainants,

v.

CLEAR RATE COMMUNICATIONS, INC.,
a public utility,

Defendant.

RECOMMENDED DECISION

The settlement agreement between Frontier and Clear Rate is approved and the case dismissed. Staff is free to pursue its claim that Clear Rate is charging an illegal Carrier Access Charge in an investigatory proceeding.

PARTIAL CASE RECORD

On March 28, 2013, Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia (Frontier), filed with the Public Service Commission (Commission) a complaint against Clear Rate Communications, Inc. (Clear Rate), and a petition for interim relief. Frontier alleged that Clear Rate was unlawfully misrepresenting itself to West Virginia consumers and businesses as Frontier or as an affiliate of Frontier, in an attempt, often successful, to "slam." Frontier subscribers to Clear Rate, and that Clear Rate was defaming Frontier in an attempt to deceive subscribers. Frontier requested injunctive relief.

¹ Rule 2.8 of the Commission's Rules and Regulations for the Government of Telephone Utilities (Telephone Rules) prohibits unauthorized changes in subscriber carrier selections, a practice commonly referred to as "slamming." W. Va. Code §24-2E-1 also prohibits slamming.

Public Service Commission
of West Virginia
Charleston

On April 5, 2013, Clear Rate filed its answer to the complaint and a counterclaim requesting its own interim and permanent relief. Clear Rate denied any illegal activities. Clear Rate asserted that Frontier had established a pattern of attempting to denigrate Clear Rate's name, intimidate Clear Rate and interfere with competition, including that Frontier was utilizing the local Pre-subscribed Interexchange Carrier (PIC) freeze process in anti-competitive ways.

By Commission Order entered on April 15, 2013, the Commission denied the requests for interim relief. The Commission included the statement that it was seriously concerned by the allegations in the pleadings, noting that Frontier and Clear Rate are aware of applicable Commission, State and Federal regulations and statutes and it expected the parties to comply with those regulations and statutes at all times. The Commission referred the matter to the Division of Administrative Law Judges for a decision to be issued no later than August 21, 2013.

On April 15, 2013, Frontier filed its Reply to the Clear Rate answer and counterclaim, denying Clear Rate's allegations.

On April 24, 2013, Clear Rate filed a response to Frontier's filing.

On June 19, 2013, a Final Joint Staff Memorandum was filed. Included was Staff's stated concern about a flat-rate \$3.21 per month Carrier Access Charge that Clear Rate charges its customers that receive long distance services, as follows: The Carrier Access Charge is included on Clear Rate's bills under the heading of "Regulatory Taxes and Surcharges." Clear Rate had expressed that, while the fee was not explicitly authorized by the Federal Communications Commission (FCC), the charge is included in the general taxes and fees quoted to customers in the amount of \$14-\$19 per month. According to Clear Rate, the fee defrays a portion of its costs for calls terminated on other networks, fees paid to support government programs, other FCC-assessed charges and additional indirect costs associated with administering and complying with governmental programs. The Carrier Access Charge is not included in Clear Rate's tariff. Staff concluded that the Carrier Access Charge violates Rule 6.3.a of the Commission's Rules of Practice and Procedure and W. Va. Code §24-2-2(f)(2), 24-2-2 and 24-2-7. That is, the fee should have been approved for inclusion in Clear Rate's tariff prior to being assessed to any West Virginia customers. In Sprint Communications Co., Case No. 03-1610-T-SC (2005), the Commission ruled that a company cannot impose a discretionary fee without first obtaining explicit authorization by the FCC, Technical Staff is of the opinion that its inclusion under the heading of Regulatory Taxes and Surcharges is misleading and also may be in direct violation of the FCC's Truth in Billing Orders. Technical Staff cited FCC Order No. 05-55, issued on March 18, 2005, in which the FCC reiterated that it is misleading for a carrier to represent in any way that discretionary line item charges are taxes or charges required by the government; it clarified that the burden rests upon the carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee conforms to the amount authorized by the government. Staff recommended that Clear Rate cease and desist from billing West Virginia customers the \$3.21 per month charge, and only recommend the charge if and when the Commission approves it. Staff further recommended that Clear Rate refund to its customers any

payments of the charge collected before any approved inclusion of the charge in Clear Rate's tariff.

On July 11, 2013, Frontier filed its response to the Final Joint Staff Memorandum.

Also on July 11, 2013, Clear Rate filed its response to the Final Joint Staff Memorandum. With respect to the Carrier Access Charge issue, Clear Rate noted that Frontier's complaint did not mention the Carrier Access Charge and there had been no consumer complaints regarding that charge. According to Clear Rate, it was only during an informal complaint resolution process that Staff raised an issue regarding this fee after Clear Rate voluntarily provided copies of a customer's invoices. Clear Rate asserted that its Carrier Access Charge is neither relevant to the issues in this case nor is it an appropriate issue to be made part of this proceeding by Staff, putting Staff in the position of being a complainant in this matter, and that Staff's attempts to join the Carrier Access Charge issue with the existing complaint violates Rule 6.2.a of the Commission's Procedural Rules. Clear Rate requested that the Commission dismiss all issues regarding the Carrier Access Charge from this proceeding.

On July 19, 2013, a Further Joint Staff Memorandum was filed, which included the following regarding to Clear Rate's position on the carrier access charge: Commission Staff has a duty to investigate all aspects of a claim and it did so properly in this matter, especially given Frontier's allegations that Clear Rate was acting in a fraudulent and misleading manner. The Commission has ruled that allegations of unreasonable utility practices under W. Va. Code §24-2-7 can be raised by Commission Staff in formal complaint proceedings. See *Sheppard v. W. Va. Power*, Case No. 94-0161-B-C (1995). Staff confirmed its conclusion that the fee is illegal, not having been approved by the FCC or by the Commission, and confirmed its previous recommendations.

On July 29, 2013, Clear Rate filed its Response to the Further Joint Staff Memorandum. Regarding Staff's position on the carrier access charge, Clear Rate argued as follows: Staff's cited authority purporting to support joining Staff's issue regarding a Carrier Access Charge to Frontier's complaint is highly distinguishable from this case and does not support including in this matter the Carrier Access Charge issue. The *Sheppard* case can be distinguished because that proceeding was initiated by a consumer complaint and not a direct competitor, unlike the *Sheppard* case and by Commission Staff in the *Sheppard* case involved the same issues, i.e., electric meter billing. In this case, Frontier's allegations that Clear Rate has been misleading customers is not at all related to a surcharge contained on Clear Rate's bills to its customers. Further, the Commission found in the *Sheppard* case that West Virginia Power had already directly responded to the allegations raised by Staff and therefore it made no sense to limit the issue to a general investigation. In this case, Clear Rate has not responded to any allegations Staff has made regarding its Carrier Access Charge, because that charge is unrelated to the claims between Frontier and Clear Rate and should not be a part of this case. Clear Rate again requested that the Commission dismiss from the case the Carrier Access Charge issue.

On August 19 and September 27, 2013, Frontier and Clear Rate filed motions for extension of the ALJ decision due date. On August 20 and September 30, 2013, the motions were granted, extending the ALJ decision due date initially to December 10, 2013, and then to January 21, 2014.

On November 12, 2013, Frontier and Clear Rate filed a Joint Stipulation and Agreement for Settlement; Staff did not join in the agreement. The essential agreement between Frontier and Clear Rate was a detailed procedure for dispute resolution between them. They agreed to dismissal of this matter, and included the following in the agreement: "Frontier agrees it will take no position with respect to Staff's concern regarding Clear Rate's Carrier Access Charge" in this matter or otherwise. Frontier and Clear Rate also agreed that the enforceability of the stipulation and agreement was contingent upon approval of it by the Commission and that, if the stipulation and agreement was not approved in whole by the Commission, it would become null and void.

DISCUSSION

The settlement agreement will be approved.

The only issue remaining is whether Staff's allegations regarding Clear Rate's Carrier Access Charge should be addressed in this matter. In Sheppard the Commission determined,

Under the facts of this case, Staff clearly raised and WVP [West Virginia Power] clearly addressed allegations of unreasonable practices under Section 24-2-7 of the West Virginia Code. Therefore, under these circumstances, to require the complaint case to be dismissed, only to start the entire process over again with a general investigation would waste the time and energy of the Commission and WVP.

Clearly Staff can raise an issue in a complaint case. Sheppard supports that whether an issue so raised by Staff should be addressed in the complaint case or reserved for a general investigation case must be decided on a case-by-case basis. Unlike in Sheppard, the issue raised by Staff in this matter is not ready for resolution; Clear Rate has not responded to Staff's charges, and, even if those charges could be addressed on the basis of documentary evidence alone, a hearing would be necessary to determine the appropriateness of Staff's recommendation of full reimbursement to the customers who have paid the Customer Carrier Charge. In Sheppard, the complainant was removed from the case after hearing; in this case, Frontier would be removed as a party prior to hearing. It is determined that administrative economy in this matter would be better served by dismissing this case. The pleadings on the issue of the legality of the Carrier Access Charge are fully provided here so that Staff can readily make them the subject of an investigation.

FINDINGS OF FACT

1. On March 28, 2013, Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia, filed with the Public

Public Service Commission
of West Virginia
Charleston

Service Commission a complaint against Clear Rate Communications, Inc., and a petition for interim relief. Frontier alleged that Clear Rate was unlawfully misrepresenting itself to West Virginia consumers and businesses as Frontier or as an affiliate of Frontier, in an attempt, often successful, to "slam" Frontier subscribers to Clear Rate, and that Clear Rate was defaming Frontier in an attempt to deceive subscribers. (See filing).

2. On April 5, 2013, Clear Rate filed its answer to the complaint and a counterclaim. Clear Rate denied any illegal activities. Clear Rate asserted that Frontier had established a pattern of attempting to denigrate Clear Rate's name, intimidate Clear Rate and interfere with competition, including that Frontier was utilizing the local Pre-subscribed Interexchange Carrier freeze process in anti-competitive ways. (See filing).

3. Staff raised as an issue in this matter that Clear Rate was charging an illegal Carrier Access Charge, and recommended that Clear Rate be ordered to cease and desist charging the charge and to provide full reimbursement of the charge. Clear Rate did not respond to the allegation, and argued that the matter should not be addressed in this complaint.

4. On November 12, 2013, Frontier and Clear Rate filed a Joint Stipulation and Agreement for Settlement; Staff did not join in the agreement. The essential agreement between Frontier and Clear Rate was a detailed procedure for dispute resolution between them. They agreed to dismissal of this matter, and included the following in the agreement: "Frontier agrees it will take no position with respect to Staff's concern regarding Clear Rate's Carrier Access Charge" in this matter or otherwise. Frontier and Clear Rate also agreed that the enforceability of the stipulation and agreement was contingent upon approval of it by the Commission and that, if the stipulation and agreement was not approved in whole by the Commission, it would become null and void. (See filing).

CONCLUSIONS OF LAW

1. It is appropriate to approve the settlement agreement between Frontier and Clear Rate.
2. Whether an issue raised by Staff should be addressed in a complaint case or reserved for a general investigation case must be decided on a case-by-case basis. See Sheppard v. W. Va. Power, Case No. 94-0161-E-C (1995). In this case administrative economy would be better served by addressing the issue in a general investigation and by dismissing this case.

ORDER

IT IS, THEREFORE, ORDERED that the Joint Stipulation Agreement for Settlement filed on November 12, 2013, between Frontier West Virginia Inc. and Citizens Telecommunications

Public Service Commission
of West Virginia
Charleston

Company of West Virginia, dba Frontier Communications of West Virginia, and Clear Rate Communications, Inc., IS APPROVED.


IT IS FURTHER ORDERED that the complaint filed on March 28, 2013, by Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia, against Clear Rate Communications, Inc., IS DISMISSED and that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, and upon all parties of record who have not filed an e-service agreement with the Commission.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed, this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Executive Secretary. No such waiver will be effective until approved by order of the Commission.


Surya Anderson
Administrative Law Judge

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in
the City of Charleston on the 20th day of August 2014.

CASE NO. 13-1818-T-GI

CLEAR RATE COMMUNICATIONS, INC.,

Staff's Petition for a General Investigation into the
charging of a carrier access charge.

COMMISSION ORDER

The Commission requires Clear Rate Communications, Inc. to file a tariff as set
forth herein.

BACKGROUND

On December 13, 2013, Commission Staff filed a request to initiate a general
investigation to determine if Clear Rate Communications, Inc. (Clear Rate) is improperly
imposing on its customers a Carrier Access Charge (CAC) of \$3.21 without seeking
Commission approval for that charge. Staff requested that the Commission order Clear
Rate to (i) cease charging the CAC immediately, (ii) be directed to seek Commission
approval through a tariff filing if it desires to reinstate the CAC, and (iii) reimburse its
customers the amounts paid illegally through this charge.

On January 3, 2014, Clear Rate filed a Response in Opposition to the Petition.
Clear Rate argued that the CAC is subject only to federal jurisdiction because Clear Rate
is a competitive local exchange carrier (CLEC) and the charge is invoiced to customers in
a bundled plan package where customers pay one monthly recurring charge for local and
long distance calling regardless of usage. The flat fee is charged to all customers who
receive long distance service as a part of their bundled plan package. The charge is
labeled as a separate line item on customer bills and is included with the estimate of taxes
and surcharges provided to prospective customers. Clear Rate explained that the charge
offsets some of the cost the company incurs for calls terminated on other networks, fees
paid to comply with government programs and other charges assessed by the FCC.

On January 23, 2014, Staff filed its Initial Joint Staff Memorandum again
requesting that the Commission initiate a general investigation and grant the relief
requested by Staff.

On February 14, 2014, Clear Rate filed a response to the Staff memorandum explaining that its bundled service package provides customers with the ability to make intrastate calls, interstate calls or no calls at all for the same monthly rate. The CAC is assessed on all customers. Because the billing is not subject to activity, Clear Rate argued that it would be unable to ascertain whether a customer has made only intrastate calls in a given month and, therefore, the CAC is subject to federal, but not state, jurisdiction because it involves interstate calling in all cases.

On February 18, 2014, the Commission issued an Order initiating a general investigation to determine if Clear Rate is improperly imposing on its customers a CAC of \$3.21 without seeking Commission approval for that charge.

On March 17, 2014, Staff filed its Final Joint Staff Memorandum. Staff argued that if Clear Rate cannot separate its customers' interstate and intrastate calls, it may be overpaying its Universal Service Fund (USF) fees and, more importantly, it may be collecting more from its customers than it is being charged for the USF fees. Additionally, the inability to separate intrastate revenues would be a violation of W.Va. Code §24-3-6, authorizing a special licensing fee, a gross intrastate revenue fee, pertinent for purposes of this discussion, and a property value assessment fee, to be applied to all utilities. Additionally, Staff stated that the annual report required by the Commission of telecommunications carriers requires a breakdown between intrastate and interstate revenues.

On March 31, 2014, Clear Rate filed a response to the Final Joint Staff Memorandum. Clear Rate argued that its assessment of FCC governed charges and its accounting principles are irrelevant to the present investigation limited to the CAC. Clear Rate alleged that it properly accounts for USF fees by using a percentage allocation accounting method. Clear Rate states that it also uses a percentage allocation method for reporting purposes to the Commission. Clear Rate argued, however, that the percentage allocation method is not relevant to the CAC because that fee is assessed as a flat fee against the bundled plan as a whole.

On April 11, 2014, Clear Rate filed responses to the Staff discovery requests.

DISCUSSION

Clear Rate argued that the CAC is subject only to federal jurisdiction because Clear Rate is a CLEC and the charge is invoiced to customers in a bundled plan package where customers pay one monthly recurring charge for local and long distance calling, including intrastate long distance calling, regardless of usage. Clear Rate argued that, because the service the customers are receiving is a bundled service, interstate long distance calls are always a part of that service and, therefore, the Commission has no

jurisdiction over this matter. The Commission disagrees with the Clear Rate argument. Clear Rate cannot avoid state jurisdiction over intrastate calls simply because it is bundling its rates. Although the billing may be combined, there certainly could be months when customers would make only intrastate calls and, therefore, the Commission could have jurisdiction over those calls.

The Commission has held that a charge similar to the CAC is an intrastate charge when the utility assesses the charge on West Virginia customer bills and the long distance activity consists of intrastate West Virginia calls. Sprint Communications Company, L.P., Case No. 03-1610-T-SC, April 28, 2005, at 10. The Carrier Cost Recovery Charge at issue in Sprint helped Sprint recover interstate access charges, regulatory compliance and proceeding costs, and property taxes. The charge was applied each month to all Sprint residential long distance customers, regardless of usage. The charge was not billed in any month when a customer had no long distance activity on his account, but could be billed if only intrastate or interexchange calls are made.

The Commission finds that Clear Rate has imposed a charge on its customers without seeking prior Commission authorization through a tariff filing. The CAC is a flat fee charged to all customers who receive long distance service as a part of the Clear Rate bundled plan package. The charge is labeled as a separate line item on customer bills and is included with the estimate of taxes and surcharges provided to prospective customers. Clear Rate explains that the charge offsets some of the cost the company incurs for calls terminated on other networks, fees paid to comply with government programs and other charges assessed by the FCC.

Although Clear Rate charges a bundled rate and Sprint did not, the analysis in the two cases is similar. A West Virginia customer could be charged the Clear Rate CAC in months when only intrastate calls are being made. Because the CAC is an intrastate charge when it is assessed in months when the only toll charges are intrastate charges, Clear Rate should be required to file a tariff containing the terms and conditions of the CAC. This tariff filing will not be subject to further review and approval, but is for the purpose of providing rate information to the public. The Commission notes that Clear Rate offered to make this same tariff filing in its Response to the Petition filed on January 3, 2014.

FINDINGS OF FACT

1. Clear Rate charges a CAC of \$3.21 to all West Virginia customers.
2. Clear Rate charges the CAC to all West Virginia customers regardless of whether the West Virginia customer bills contain charges for intrastate calls or only interstate calls.

3. Clear Rate did not seek Commission approval prior to assessing the CAC.
4. The CAC does not appear on the Clear Rate tariffs approved by and on file with the Commission.

CONCLUSIONS OF LAW

1. Because Clear Rate assesses the CAC on West Virginia customer bills when the only long distance activity consists of intrastate West Virginia calls, the CAC in those situations is an intrastate charge.
2. Clear Rate failed to comply with the requirements of Chapter 24 of the West Virginia Code and the Tariff and Telephone Rules in implementing the CAC.
3. It is reasonable to require Clear Rate to file a tariff containing the terms and conditions of the CAC. This tariff filing will not be subject to further Commission review and approval but is for the purpose of providing rate information to the public.

ORDER

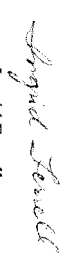
IT IS THEREFORE ORDERED that within thirty days of the date of this Order, Clear Rate Communications, Inc. shall file a tariff containing the terms and conditions of the Carrier Access Charge.

IT IS FURTHER ORDERED that should Clear Rate Communications, Inc. fail to file the required tariff within thirty days of the entry of this Order, the company shall cease imposition of the Carrier Access Charge and notify the Commission of this action.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,


Ingrid Ferrell
Executive Secretary

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**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 31st day of October 2014.

CASE NO. 13-1818-T-GI

CLEAR RATE COMMUNICATIONS, INC.,
Staff's Petition for a General Investigation into the charging of a carrier access charge.

COMMISSION ORDER

The Commission denies a Petition for Reconsideration.

BACKGROUND

On December 13, 2013, Commission Staff filed a request to initiate a general investigation to determine if Clear Rate Communications, Inc. (Clear Rate) is improperly imposing on its customers a Carrier Access Charge (CAC) of \$3.21 without seeking Commission approval for that charge. Staff requested that the Commission order Clear Rate to (i) cease charging the CAC immediately, (ii) be directed to seek Commission approval through a tariff filing if it desires to reinstate the CAC, and (iii) reimburse its customers the amounts paid illegally through this charge. On February 18, 2014, the Commission initiated a general investigation into the matter.

On August 20, 2014, the Commission issued a final Commission Order holding that Clear Rate must file a revised tariff with the CAC listed on the tariff. The Commission reasoned that the charge could be assessed on West Virginia customers in months when the long distance activity consisted only of intrastate calls even though the billing is bundled.

On August 28, 2014, Staff filed a Petition for Reconsideration arguing that the Commission must address whether the placement of the CAC under the Regulatory Taxes and Surcharges section of its bill violates the Federal Communications Commission (FCC) Truth in Billing Policy and, therefore, is an unreasonable practice under W.Va. Code §24-2-7. Additionally, Staff questioned whether the failure to specifically mention the CAC in the script read by Clear Rate employees to customers and potential customers of Clear Rate is an unreasonable practice under W.Va. Code §24-2-7. Staff alleged that Clear Rate was engaging in an unreasonable practice under W.Va. Code §24-2-7 in its

petition, but did not make its allegation that the placement of the CAC on the bill violates W.Va. Code §24-2-7 until the Initial Joint Staff Memorandum filed on January 23, 2014.

On September 12, 2014, the Commission issued an Order requesting additional information from Clear Rate pertaining to the placement of the CAC on its bills.

On September 17, 2014, Clear Rate submitted the additional information requested by the Commission. The information filed by Clear Rate indicates that in twelve of the thirteen states in which Clear Rate operates, including West Virginia, Clear Rate places the CAC under the "Regulatory Taxes and Surcharges" section of the bill.

On September 30, 2014, Staff filed a Final Joint Staff Memorandum recommending that the Commission grant the Petition for Reconsideration. Clear Rate opposed the Final Joint Staff Memorandum. Response in Opposition to the Final Joint Staff Memorandum, October 10, 2014.

DISCUSSION

Staff requested that the Commission reconsider the final Commission Order entered on August 20, 2014, because the Commission did not address Staff allegations that the placement of the CAC on the bill is a violation of the FCC Truth in Billing rules and, therefore, a violation of W.Va. Code §24-2-7. Additionally, Staff argued that the failure by Clear Rate to include the CAC in its script is also a violation of W.Va. Code §24-2-7.

In twelve of the thirteen states in which Clear Rate operates, including West Virginia, Clear Rate places the CAC under the "Regulatory Taxes and Surcharges" section of the bill and describes the charge as a Carrier Access Charge. Staff did not identify, and the Commission is unaware of, any other state in which Clear Rate operates that has taken issue with the placement of the CAC. Regarding the script, Clear Rate states that consumers are informed of the service plan price. Prior to the close of the sale, consumers are informed that the regulatory taxes and surcharges, including the CAC, will total between fourteen and nineteen dollars per month.

Consumers do not need to be informed, item by item, of each tax and surcharge as long as the entire amount is disclosed to those customers. Clear Rate has not violated W.Va. Code §24-2-7 by either the placement of the CAC on the bill or the lack of specific mention of the CAC in the Clear Rate script. Furthermore, the FCC, and not the Commission, would be the appropriate entity to determine if the Truth in Billing rules promulgated by that agency were violated.

FINDINGS OF FACT

1. Staff requested that the Commission reconsider its August 20, 2014 Commission Order and address whether (i) the placement of the CAC under the Regulatory Taxes and Surcharges section of its bill and (ii) the failure to specifically mention the CAC in the script read by Clear Rate employees to customers and potential customers violates the FCC Truth in Billing Policy and, therefore, is an unreasonable practice under W.Va. Code §24-2-7.
2. In twelve of the thirteen states in which Clear Rate operates, including West Virginia, Clear Rate places the CAC under the "Regulatory Taxes and Surcharges" section of the bill and describes the charge as a Carrier Access Charge. Clear Rate sample bills, September 17, 2014.
3. The Clear Rate sales script includes, prior to the close of the sale, information that the regulatory taxes and surcharges, including the CAC, will total between fourteen and nineteen dollars per month. Response in Opposition to Final Joint Staff Memorandum, October 10, 2014.

CONCLUSIONS OF LAW

1. Clear Rate has not violated W.Va. Code §24-2-7 by either the placement of the CAC on the bill or the lack of specific mention of the CAC in the Clear Rate script.
2. The FCC, and not the Commission, is the appropriate entity to determine if the Truth in Billing rules promulgated by that agency were violated.


ORDER

IT IS THEREFORE ORDERED that the Petition for Reconsideration is denied.

IT IS FURTHER ORDERED that on entry of this Order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, True


Ingrid Ferrell
Executive Secretary

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FILED
2015 FEB 25 PM 1:11
CATHY S. GASTON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISSEY, Attorney General,
Plaintiff/Petitioner,
v.
CLEAR RATE COMMUNICATIONS, INC.,
a Michigan corporation,
Defendant/Respondent.

Civil Action No. 13-C-2357
Hon. Paul Zakaleb, Jr.

AGREED ORDER DISMISSING THE COMPLAINT

This day came the Plaintiff State of West Virginia, ex rel. Patrick Morrissey, Attorney General, by counsel, and the Defendant Clear Rate Communications, Inc., by counsel (together referred to as the "Parties"), and announced to the Court that the Parties have settled Plaintiff's claims against Defendant as set forth in the Complaint and jointly moved this Court for an order dismissing the Complaint with prejudice.

The Court hereby ORDERS, ADJUDGES and DECREES that the Complaint against Defendant be and is hereby dismissed with prejudice.

The Court further directs the Clerk to send a copy of this Order to all parties of record.

ENTERED: February 25, 2015

Gann S. Pitt
JUDGE

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
CATHY S. GASTON, CLERK OF CIRCUIT COURT OF SAID COUNTY
APPEAR IN SAID STATE COURT AND CERTIFY THAT THE FOREGOING
DOES CONFORM TO THE ORIGINAL FILED IN THE CLERK'S OFFICE
DATE OF FEBRUARY 25, 2015
BY CATHY S. GASTON
CLERK OF CIRCUIT COURT OF SAID COUNTY

AGREED TO BY:

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ARIZONA CORPORATION COMMISSION

Application and Petition for
Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services.

CLEAR RATE TELECOM, L.L.C.

Attachment G

Financial Projections

Clear Rate Telecom, L.L.C. considers its financial information confidential.
Clear Rate is willing to provide un-redacted financial statements to the Commission,
under seal, following entry of a protective order in this proceeding.

Clear Rate Telecom, L.L.C.
Arizona Financial Projections

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.

[REDACTED]

2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.

[REDACTED]

3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

[REDACTED]

4. If the projected value of all assets is zero, please specifically state this in your response.

[REDACTED]

5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

[REDACTED]